

Md. Sayum Vs. the State of Bihar

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Court : Patna

Decided On : Apr-17-2007

Judge : Navin Sinha, J.

Appeal No. : Cr. Misc. No. 26622 of 2006

Appellant : Md. Sayum

Respondent : The State of Bihar

Disposition : Application allowed

Judgement :

Navin Sinha, J.

1. The viscera in cases of unnatural death is crucial in criminal jurisprudence. Chapter 10 and 42 of the Bihar Police Manual contain detailed guidelines.
2. This Court while hearing bail applications has come across several cases, where the viscera and the need for its report has been treated with great disdain both by the Investigating Authorities and the Medical Authorities. The non-availability of the viscera can prove prejudicial to the prosecution. The delay in transportation and examination of viscera can produce flawed results.
3. The present is a case where the Doctor carrying out the post-mortem found no apparent cause of death. A definite opinion regarding cause of the death was

reserved till receipt of the viscera report. The viscera report never came. The charge sheet came to be submitted without the report.

4. This Court in the circumstances required the Superintendent of Police, Samastipur and the Medical Officer Incharge of the Sadar Hospital, Samastipur, to file an affidavit explaining the non-availability of the viscera report. The affidavits were disturbing and prompted this Court to pass the present order.

5. The affidavit affirmed by the Superintendent of Police, Samastipur states that the Sadar Hospital was requested to make available the viscera report, but, the Hospital said that the records were very old and, therefore, not available and there was no hope to retrieve the same. This was then mechanically recorded in the case diary. The erstwhile Superintendent of Police then recorded that since the viscera was not available, the matter shall be best left for the trial by the Court. The affidavit acknowledged that the viscera did not appear to have been sent for examination. This Court was, therefore, left in a completely inconclusive position in the matter.

6. The affidavit of the Medical Officer of Sadar Hospital states that the viscera was preserved in common salt solution to be sent to the Forensic Science Laboratory, Patna; that the Superintendent of Sadar Hospital, Samastipur in consultation with the Deputy Superintendent of Police sent the viscera to the Forensic Science Laboratory. The affidavit says no more. The contradiction in the affidavits is glaring.

7. This Court in the circumstances required the Inspector General of Police, Tirhut Zone to hold an inquiry about the circumstances in which the viscera report of the deceased in the present case never came to be preserved and submitted, and the non-availability or absence of the same was never questioned by any superior Police authority. The order also required the details of the number of viscera reports still awaited in Tirhut range and the period from which they are pending. A report dated 3.4.2007 was then submitted. It shows a total of 156 cases pending awaiting the viscera report from the Forensic Science Laboratory. This commenced from as early as 1991. The report only mentions when the viscera was forwarded. Not a single item explains the receipt of the viscera report. Even

on the facts of the present case it states that the viscera was not sent to the Forensic Science Laboratory for chemical examination by the Police. No instructions had been given by the Superintendent of Police to the Investigating Officer for sending the viscera to the Forensic Science Laboratory for examination. No instructions had been issued to the Investigating Officer and the District Hospital for handing over the viscera of the deceased.

8. The materials set-forth above reflect a complete state of apathy, ignorance, complacency and uncertainty both by the Police and the Medical authorities in the issue of viscera.

9. Chapter 10 of the Bihar Police Manual deals with the procedure required to be followed in case of an unnatural death. Rule 205 deals with investigation in cases of suspicious and unnatural death. The viscera in such cases is required to be placed in clean bottles carefully secured and sealed. Rule 216 deals with chemical examination which shall include viscera. The Police is not to send the viscera for examination directly, but, the same is to be sent through the Judicial Magistrate concerned with full details. Under Rule 216(b) the result of analysis shall be communicated immediately to the Station Incharge and the original is to be filed with the Magistrates record. The aforesaid provisions are supplemented by Chapter 42 of the Police Manual. Rule 1254(c) directs that the exhibits are preferably sent by the Investigating Officer through the Judicial Magistrate concerned though there is no bar in sending them through the Superintendent or Sub-divisional Police Officer also. However in cases where the samples have been collected by the Medical Officer, it shall be sent by them directly. In all cases where the exhibits are likely to be damaged in transit or delay is likely to cause deterioration or putrefaction, these should be sent through Special Messenger at once. Rule 1254(g) provides for training and research by the establishment of Forensic Science Library and a Police Museum for training of the personnel working in the laboratory and of Police/Medical/Judicial Officers. The items to be kept in the museum are detailed in Rule 1388. The information is to be exchanged with institutions and laboratories in India and abroad so that research may be done in forensic science. Rule 1258 deals with receipt and disposal of exhibits and articles sent for examination in the laboratory. It is required to be packed and

sealed in accordance with appendix 78 accompanied by a forwarding letter in the prescribed manner. It is necessary for the Investigating Officer to maintain close liaison with the Medical officer for the same. After the test is conducted the Superintendent of Police is to be informed to depute a special messenger for taking back the sample and the report. Those items which are subject to deterioration are to be given priority in examination. Special urgent examination is also to be done under the orders of the Court. Rule 1259 specifically notices that the delay causes putrefaction of organic materials so that the minute quantity of poison in them shall get disintegrated.

10. The Police Manual provides for forwarding of the viscera both by the Police Officer and by the Medical Officer, as the case may be. The Manual also provides that it is advisable to have the viscera sent for examination to the Laboratory through the Court of the Magistrate concerned. This is not without reason.

11. Alertness, promptness and liaison by the Investigating Officer with the Medical Officer will ensure timely submission of viscera for examination before putrefaction. It will also ensure timely submission of the reports of such examination. Forwarding of the viscera to the laboratory under orders of the Court shall ensure that a regular check and follow up is maintained by the court concerned, the Investigating Officer and the Public Prosecutor. The orders/directions/reminders of the Court will act as catalyst to ensure timely submission for examination and the report of the examination. The delay can be monitored by appropriate orders and/or directions by the Court either suo motu or at the behest of any of the agency of the prosecution. In urgent matters, the Court may also issue appropriate directions. Perhaps the acts of the Investigating Officer in this regard may suitably be incorporated in the case diary also at the stage of supervision which shall have its own advantages for future cases and act as guidelines, and any lacuna or laxity at any stage be brought to the attention of the concerned Magistrate.

12. A periodic review at the level of the Police Station, albeit under the supervision of a superior Police Officer, at regular intervals by maintaining a record of all such matters in collaboration with the Public Prosecutor by holding special meeting at

fixed intervals may perhaps yield better results than the situation that exists presently. This Court further considers it necessary to observe from the several bail applications which come before it that perhaps the importance of viscera in chemical examination and the method and manner of the same as a scientific aid to investigation does not appear to be given the importance that it should get.

13. From what has been observed hereinabove, greater alacrity and sensitivity to the issue may achieve improved results. The facility's in the Forensic Laboratory's are woefully inadequate. Perhaps a beginning can be made. An organised approach may bring better results and aid in dispensation of justice. The Court hopes that the investigation agencies may take notice of the observations presently. That itself may be a matter of satisfaction.

14. In the facts and circumstances of the present case, the provisional bail granted to the petitioner by order dated 11.10.2006 is hereby confirmed. The time for surrender is extended by four weeks from today.

15. Let a copy of the order be forwarded to the Director General of Police, Bihar.