

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Cr. M.M.O. No: 90 of 2005**

**Judgment reserved on 3.8.2007**

**Date of decision: 31.8.2007**

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**Ashok Kumar**

**Petitioner**

**Versus**

**State of H.P. and others**

**Respondents**

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***Coram***

**The Hon'ble Mr. Justice Deepak Gupta, Judge.**

***Whether approved for reporting?*<sup>1</sup>**

**For the Petitioner: Mr. Anup Rattan, Advocate**

**For the Respondents: Mr. M.S.Chandel, Advocate General, with  
Mr. C.B. Singh, Deputy Advocate General**

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**Deepak Gupta, J.**

The petitioner is the unfortunate father of a young boy Dikshit Dhanda who died an unnatural death at Sundernagar in the State of H.P. on 19<sup>th</sup> June, 2005 which also happened to be Dikshit's birthday.

The petitioner suspects that there is a foul play and that his son has been murdered. He, by means of this writ petition, has prayed that the matter be got

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<sup>1</sup> ***Whether the reporters of the local papers may be allowed to see the Judgment?***

investigated by an independent agency, preferably the Central Bureau of Investigation so that the truth is unravelled.

Deceased Dikshit Dhanda was a student of 10+2 class in Bhartiya Vidya Mandir, Kitchlu Nagar, Ludhiana. A school trip was organized which went to Manali from Ludhiana. A number of teachers of the school alongwith 37 students went on the trip. The deceased, Dikshit Dhanda, was part of the group. Respondent No. 6 Robin Jindal was one of the students who also joined the group. The deceased was carrying a mobile phone having No. 94176-95894. Though the petitioner has alleged that he was virtually forced by the school authorities to send his son on this trip, but there is nothing on record to support his version. From Manali the children were taken to Manikaran and late in the evening of June 19, 2005 the bus carrying the children reached Sundernagar. It stopped at Annapurna Dhaba and the deceased talked to his father at 9.08 p.m.

According to the petitioner at about 10.30 p.m. the principle of the school telephonically informed him that his son was missing and his whereabouts were not known. Thereafter the petitioner alongwith his wife and

brother-in-law went to Sundernagar. It is apparent that the petitioner even at that stage itself had started suspecting some foul play because he started recording the conversations with the teachers on his mobile phone. When the petitioner reached Sundernagar, he was informed that his son had fallen into the canal at Sundernagar.

Annapurna Dhaba is situated on the National Highway No. 1-A. The canal is across the road. According to the school authorities, the deceased had gone across the road to urinate and the deceased slipped and fell into the canal. According to the petitioner the body was not traced and he came back to Ludhiana and he further averred that police at Sundernagar was not taking any interest in the matter. The body of Dikshit Dhanda was taken out of the lake at Sundernagar on 5<sup>th</sup> July, 2005 about 16 days after the incident. Thereafter postmortem of the body was conducted. The police came to the conclusion that it was a case of accident inasmuch as the deceased had gone to urinate and fell down in the canal. The petitioner not being satisfied approached this court by means of this petition.

On 13.7.2006 Hon'ble the Chief Justice who was then dealing with the matter passed a detailed order relevant portion of which reads as follows:-

“I do not wish to express any opinion nor do I want to make any observation or offer any comment about the subject matter of the controversy or the merits of the case, but I do feel convinced that perhaps this is a fit case where a further, detailed and comprehensive investigation is required to be carried out under the overall supervision of a senior level and experienced Police Officer to ascertain the exact and true cause of death and if as a result of such investigation it is found that the death of Dikshit Dhanda was the result of murder or as a consequence of the commissioning of any other offence, to bring to books the guilty.

Mr.M.S.Chandel, learned Advocate General, is in agreement with this view of the Court because he also very frankly and fairly submits that, first and foremost no prejudice would be caused to any one if the matter is further investigated in details, and secondly such an investigation by a senior ranking Police Officer will infuse the requisite confidence in the mind of the petitioner as well as in the minds of his family members. Actually someone who lost his son, a 17 years old boy, in mysterious and suspecting circumstances has all the reasons to entertain all doubts and the minimum that this Court can do is to evolve a mechanism so as to have the investigation carried out and concluded in

the best possible manner to allay all the apprehensions and fears in the mind of the petitioner.

To reiterate, the purpose of the investigation is to arrive at the truth and nothing else. Not that this Court seriously or conclusively doubts the earlier investigation in the matter but this Court also, at the same time feels that the new Investigating team (to be constituted because of the order being passed today) should not be influenced in any manner by the earlier investigation, its report, or its findings because if that is allowed to happen it would defeat and frustrate the very purpose of passing this order.

In the course of the investigation the new Investigating team will question, in every possible manner, all persons associated, connected, suspected or involved. If need be, this new team may visit Ludhiana, or any other place that it requires to visit for the completion of the investigation. Everyone accordingly, more particularly, S.S.P., Ludhiana is directed to provide every assistance and render every cooperation to this team of Investigators for the completion of the investigation in the best possible manner.

I hereby appoint Shri S.Z.H.Zaidi, IPS, presently functioning as Superintendent of Police, Vigilance Department, North Zone, Kangra at Dharamshala, as the Officer to head the aforesaid Investigating team. I direct Director General of Police, Himachal Pradesh, to nominate two other

members of the investigating team, who should be in the rank of Dy. Superintendent of Police/Inspector/Sub Inspector. The Director General of Police shall ensure that keeping in view the spirit of this order, only the most appropriate persons are appointed to constitute the aforesaid team apart from Shri S.H.Z.Zaidi. The Director General of Police shall complete this process within one week from today. The Investigating Team shall start its job latest by 24<sup>th</sup> July, 2006 and make an earnest endeavour to complete the investigation by 16<sup>th</sup> September, 2006. It shall submit its report to this Court in a sealed cover on the next date.

List on 18<sup>th</sup> September, 2006.

Dasti copy”.

Mr. S.Z.H. Zaidi, who was appointed by this court to re-investigate the matter, has re-investigated the matter and has filed his report and his conclusion is also that there is no foul play in the death of Dikshit Dhanda which is an unfortunate accident. Not satisfied, the petitioner still wants re-investigation of the case.

I have heard Mr. Anup Rattan, learned counsel for the petitioner and Mr. C.B.Singh, Deputy Advocate General. I have also gone through the entire inquiry report and the statements of the witnesses and other documents filed with the inquiry report. On the

insistence of the petitioner I have also viewed two of the CDs produced by the petitioner. One of the CDs shows the area in which the accident took place and one CD is taken after the postmortem of the deceased at the time of his funeral rites. According to the learned counsel for the petitioner even as per the postmortem report no water or mud has been found in the lungs of the deceased and, therefore, it cannot be believed that the deceased died due to drowning. He also submits that drowning could not have taken place when no water had entered into the lungs of the deceased. According to the petitioner his son, in all probabilities, has been murdered by Robin Jindal and did not fall into the canal. It is also alleged that the inquiry officer appointed by this court has not investigated various important and vital links such as the various telephonic calls made from mobile phone of the petitioner, especially the last telephonic call allegedly made by Robin Jindal. It is alleged that in fact the deceased had suffered injury on the back of his neck and he had died before his body was dumped into the canal.

In terms of the order, quoted hereinabove, Mr. S.Z.H. Zaidi, IPS, Superintendent of Police, Vigilance Department, North Zone, Kangra at Dharamsala was

appointed as head of the investigation team. The Director General of Police nominated Mr. Gurdev Chand, HPS, Deputy Superintendent of Police, Vigilance, A.C. Zone, Mandi and Inspector Manoj Jamwal, to be the other two members of special investigation team. The special investigation team studied the record of previous investigation team, visited Ludhiana and recorded the statements of the petitioner and other family members and also obtained the entire records including audio and video recording which had been made by the complainant. The investigation team also obtained the call details of the mobile phone which was with the deceased. The statements of 31 out of 36 other students who had accompanied the deceased and the teachers on the tour were recorded. Statement of other teachers of the school were also recorded. The special investigation team also recorded the statements of the tour operator, the driver of the bus and the conductor. It also recorded the statements of two other witnesses who were present at Annapurna Dhaba on the said date. Other material was also examined and the special investigation team also conducted a simulation exercise on the spot by using a dummy of the same dimensions as the deceased. This



simulation test was carried in the presence of the petitioner and other family members. After collecting the entire record, recording the evidence and investigating the matter in details, the special investigation team has come to the conclusion that no foul play is established in the death of the deceased and in all likelihood his death was caused due to an accidental fall in the Baggi Sundernagar Section of the BBMB Canal opposite the Annapurna Dhaba at Dhanotu, Sundernagar.

The petitioner had alleged before the investigation team that the school teachers were unnecessarily harassing his son. The investigation team has investigated the academic records of the deceased right from class I and from a perusal of the record it is apparent that the deceased was much below average in studies. All the teachers have stated that he was an undisciplined child and was short tempered. The apprehension of the petitioner that his son was being unnecessarily harassed by the school authorities is totally unfounded.

Another point raised by the petitioner before the investigation team was that the school trip was initially scheduled to leave Ludhiana on 13.6.2005, but for some

suspicious reasons was postponed to 15.6.2005. It is also stated that son of the deceased was not willing to go on the trip, but was compelled by Santosh Mehra to go on the trip. It is also alleged by the complainant that despite the students' opposition, Santosh Mehra extended the tour to Manikaran. The investigation team has found that the school trip was scheduled to leave on 13.6.2005, but since the tour operator could not arrange the rooms at Manali on the said dates, the tour was postponed. As far as the extension of tour to Manikaran is concerned, the statements of all the students, the teachers, the driver of the tour bus etc. are that in fact it is the students who insisted that they wanted to visit Manikaran, especially the Gurudwara at Manikaran and they did want to visit the Manali club as originally scheduled. According to all these witnesses this change was known to all even before the tour left Ludhiana. The allegation of the petitioner that his son did not want to participate in the tour is not supported by any material. No body was forced to join the tour and in fact any person who wanted to join the tour had to deposit Rs. 2,500/-. If the deceased had any reservations he or his parents need not have deposited this amount.

Further this story of the petitioner is also belied by the fact that admittedly he provided a mobile phone to his son.

According to the petitioner there was friction between him and his extended family and probably for this reason his son had been done to death by persons who were inimical to him. The investigation done by the special investigation team reveals that there is a lot of friction between the family of Ashok Dhanda and his brothers and sisters which is relatable to some family business. However, this friction has no relation with the death of Dikshit Dhanda and there is no material on record to show that there was any criminal conspiracy to eliminate Dikshit Dhanda through a third person. The special investigation team after carrying on detailed investigation has found that the mobile phone of the deceased with its unique IMI number was never used after his death. The statements of various students which I have gone through in detail clearly indicate that the tour went on like any normal school tour. There was no fight between the deceased or any children when the tour group was taken to Manali or any other place. Similarly, the allegation of the petitioner that Baldev Singh, driver of the bus, had witnessed a fight between Robin Jindal and

the deceased, is not borne out from the record. Baldev Singh in his statement has clearly denied observing any fight/quarrel during the tour. There is no evidence of any enmity or quarrel between Robin Jindal and Dikshit Dhanda before or during the trip. According to the teachers and the students who went on the tour, the students chose their own room mates during the tour and that deceased Dushyant Dhanda chose to stay with Robin Jindal, Robin Makhija, Amit Bansal and Mohit Grover. It is apparent from the material collected by special investigation team that Dikshit Dhanda was not forced to stay with these 4 students. They obviously were friends and got along well. They were class mates and the other boys also used the phone of the deceased to contact their parents at Ludhiana.

The investigation done by the special investigation team reveals that when the bus reached Annapurna Dhaba there was a rush of students who wanted to use the toilets. This is natural after a long uninterrupted journey. There were a total number of 45 persons in the group which included the teachers, students both boys and girls. Keeping in view the rush in the toilets, it would not be unnatural for some boys to go

out of the Dhaba to urinate in the open. According to Robin Makhija at about 9.00 p.m. their bus reached Sundernagar at Annapurna Dhaba. The students got down from the bus. The students were to have their meals there. According to him he asked the driver to unload his luggage since he was to take out his mobile charger. He went to Dhaba to find a plug point where he could fix his charger. In the meantime he heard noise from outside. He went down and all the children were running outside. Robin Jindal was shouting that Dikshit Dhanda has fallen into the canal. All the students then started looking for him.

Robin Jindal in his statement has mentioned that the bus reached Annapurna Dhaba at about 9/9.30 p.m. The deceased Dikshit Dhanda, Robin Makhija and Robin Jindal got down from the bus later. Robin Makhija asked the driver to open the boot of the bus so that he could take out the mobile charger from his luggage. Thereafter Robin Makhija climbed the stairs leading to the Dhaba and Robin Jindal and the deceased went towards the toilets. There was a huge rush outside the toilets and they decided to go to urinate outside. They were crossing the road to go across to the other side when one vehicle

was coming on the road. Dikshit Dhanda ran across the road and reached the other side, but he (Robin Jindal) got left behind. Then he also crossed the road and there was a mud embankment. As soon as he reached there he heard the sound of something falling into the water. He looked down and saw that Dikshit Dhanda had fallen into the water and was waving his arms. Robin Jindal then ran towards the Dhaba and informed the other students and teachers about the incident. The statements of Robin Jindal and the other witnesses is corroborated virtually by all the other students who were there at the Dbaha.

I have gone through the postmortem report and a perusal of the same shows that there is no injury mentioned on any part of the body of the deceased. There is nothing to indicate in the postmortem that the deceased Dikshit Dhanda was done to death and then thrown into the river. Even the CD referred by the petitioner does not clearly indicate that there is any injury on the neck of the deceased. Further more, no reliance can be placed on such a CD in view of the postmortem report.

The main arguments raised before me are that there was no water or mud in the lungs and this

indicates that the death was not due to drowning in the water. I am unable to accept this argument. As per the postmortem report, the body was in an advanced stage of decomposition and doctors had assigned the following cause of death:-

“Due to advanced decomposition changes absence of any injury or any pathological lesions, no gross evidence of any poisoning changes it is not possible for us to opine about the cause of death. However, as the body was recovered from the water and absence of any finding the death of deceased is consistent with drowning. But final opinion will be given after the report of the chemical analysis of the viscera.”

In the viscera no poison or any other material has been found. According to the doctors the death of the deceased is consistent with drowning. The special investigation team again questioned the doctors on this account and the final opinion after the report of the viscera was received was given in the following terms:-

“In the light of the above reports, the post-mortem report has been reviewed and our final opinion in the case is that due to advanced decomposition changes, absence of any injury or pathological lesions no evidence of any poisoning in chemical examination it is not possible for us to

opine about cause of death however as the body was found in water in absence of any other finding, death of deceased is consistent with drowning.”

A clarification was asked from the doctor concerned. The doctor replied to the letter of special investigating officer . Relevant portion of the letter reads as follows:-

“Before clarifying the point raised by you we would like to state that whenever a body is found submerged in the water three basic questions are to be answered:-

- a) Who is the person (identify the deceased).
- b) How long the body has been submerged in the water (Postmortem interval).
- c) Did he drown (cause of death).

The autopsy diagnosis of drowning some times becomes difficult because of findings are often minimal, obscure or completely absent. Hence when the findings are negative cause of death may be given as consistent with drowning.

The clarification of points asked by you are:

- 1) As per our report, no water was found in the lungs, stomach of the deceased. The death of the deceased is reported to be consistent with drowning due to the advanced decomposition as it is difficult to comment whether the absence of water is due to decomposition or due to laryngeal spasm.



- 2) The decomposed condition of the body can attribute the absence of water in these organs.
- 3) As mentioned earlier that laryngeal spasm may be the cause of absence of mud in the lungs.
- 4) The word Flotation test of lungs is not clear to us. Kindly explain the word so that he will be able to comment to this test. As per our knowledge there is no mention of this test in drowning.”

The doctor has explained that absence of water and mud does not mean that the death is not due to drowning and the absence of water could be because of decomposition of the body or absence of mud could be because of laryngeal spasm.

Another point urged is that there is no investigation with regard to last call made from the phone of the deceased. The last call was made from the phone by Robin Jindal at 9.16 p.m. This was made to his house. In case he had killed the deceased there was no reason for him to have made the phone call from the phone of the deceased. In fact the fact that Robin Jindal had used the phone indicates that he had used it with the permission of the deceased. It is clear from the investigation that the phone call was made to his residence at Ludhiana. No further investigation was called for in this behalf.

Keeping in view all the facts and circumstances of the case I feel that the special investigation team has done a commendable job and the petitioner has failed to make out any case for further investigation in the matter.

Before parting with the case I must observe that the distraught parents of a child who has died an unnatural death may some times suffer from a delusion that his death is due to homicide. They cannot accept the fact that their young son has died. One has full sympathy with them, but on the other hand, it would not be fair to make the respondent No. 6, who is alleged to have murdered the deceased Dikshit Dhanda, an accused without any material on record. He is also a young boy. From the detailed investigation done, it is clear that all the boys and girls were happy during the tour. There was no altercation between any body. There is nothing to suggest that Robin Jindal murdered the deceased. There is not even the remotest indication to show the motive for causing such death, especially when a few minutes prior to the incident both of them were happily talking to each other in the presence of their other class mates. Though this court has full sympathy with the parents of the

deceased, the matter must be brought to an end and no further investigation is called for.

The petition is, therefore, disposed of in view of the inquiry report submitted by the special investigation team headed by S.Z.H. Zaidi, IPS. The prayer of the petitioner for further re-investigation does not have any merit and is accordingly rejected.

August 31, 2007(K)

( Deepak Gupta ), J.