

ORDER SHEET
LAHORE HIGH COURT MULTAN BENCH
MULTAN (JUDICIAL DEPARTMENT)

W.P.No.5633 of 2017

Rana Shahbaz Ahmad Vs. Sessions Judge, etc.

| Sr. No. of order of proceeding | Date of order of proceeding | Order with signature of Judge, and that of Parties of counsel, where necessary |
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13.07.2017

Sardar Usman Sharif Khosa, Advocate for the petitioner.
Rana Shahzad Ullah Khan, Advocate for respondents No.4 & 5.
Mahar Nazar Abbas Chawan, Assistant Advocate General,
Punjab.
Riaz Ahmed, SI.

Through the instant petition, moved under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 read with section 561-A Cr.P.C., Rana Shahbaz Ahmad (petitioner) made the following prayer:-

“Under the afore-going facts & submissions, it is most respectfully prayed that instant petition may kindly be accepted and the impugned orders dated 03.02.2017 & 28.03.2017 passed by the learned respondent No.1 & 2 may kindly be declared illegal, void ab-initio, against the law, facts, null and void and set aside the same in the interest of justice & equity and application U/S 176 Cr.P.C. filed by the petitioner may very kindly be accepted and disinterment of dead body may kindly be allowed for conducting the second postmortem report by the medical board regarding the exit wound of dead body which is behind the head in the interest of justice.

Any other relief which this Hon’ble Court deems fit and necessary may also be awarded to the petitioner.”

2. Precisely, stated the facts which led to the filing of the instant petition are to the effect that on 21.05.2016 at about 8:00 p.m., the brother of the petitioner namely Rana Israr Ahmad (deceased) was murdered by certain persons, which led to the registration of case FIR No.207/2016 under sections 302,148,149 PPC at Police Station Fateh Sher, District Sahiwal. According to the allegations incorporated in the crime report, Rana Anwar and Rana Munawar (respondents No.4 & 5 respectively) were saddled with the responsibility of inflicting one firearm injury each on the right eye and on the left side of the cheek of the deceased. The dead body of the deceased (Rana Israr

Ahmad) was subjected to postmortem examination on 22.05.2016 at about 5:00 a.m. According to the opinion of the doctor, he noted two injuries; one on the right eyebrow and the other below the left eye of the deceased. Injury No.1, according to the doctor, was an entry wound whereas the other one was an exit wound. Since this opinion was running contrary to the case of the complainant, an application under section 176 Cr.P.C. for disinterment of the body of the deceased and for further re-examination was moved before the learned Area Judicial Magistrate, Sahiwal which was dismissed vide order dated 03.02.2017. The order of the Area Magistrate was assailed through an application under sections 535 & 439-A Cr.P.C. which was also dismissed vide order dated 28.03.2017 passed by learned Sessions Judge, Sahiwal, hence, the instant petition.

3. It is contended by learned counsel for the petitioner that admittedly, Rana Israr (deceased) died an unnatural death and that too through firearm injuries; that according to the witnesses, the deceased received two firearm injuries on different parts of his face with exit wounds at the back of his skull; that according to the postmortem examination, though there are two injuries on the face of the deceased but out of these one is described as entry wound, whereas the other is stated to be its exit; that the postmortem report prepared by the medical officer is not based on the correct data, hence, is liable to be scrutinized through re-examination; that if the dead body of the deceased is not subjected to medical re-examination through disinterment, the case of the complainant is likely to be damaged; that the medical officer as well as the Investigating Officer in order to damage the case of the complainant and to provide favour to the accused furnished an incorrect data by suppressing the exit wound present on the back of the skull; that there is no legal bar or restriction for the disinterment of the dead body and lastly that the law has not prescribed any limitation for proceeding under section 174 read with section 176 Cr.P.C.

4. Learned counsel for respondents No.4 & 5 strongly controverted the arguments advanced on behalf of the petitioner and argued that the occurrence took place on 21.05.2016 and now this is too late in the day to re-examine the dead body of the deceased through disinterment; that there is no enabling provision which authorizes the disinterment of the dead body after its burial and more so when it is done after postmortem examination; that section 176 Cr.P.C. does not cater with the proposition like the instant one and instead deals with the cases of custodial death; that the instant petition is based on after thought story which is aimed at countering with the lacunas having come to the surface after the postmortem examination. With these submissions, learned counsel for respondents No.4 & 5 sought dismissal of the instant petition.

5. Arguments heard and record perused.

6. It divulges from the perusal of the record as well as from the arguments advanced by both the parties, that the instant petition is focused at subjecting the dead body of the deceased to medical re-examination through disinterment. According to the case of the prosecution, as it spells out from the crime report, Rana Israr Ahmad (deceased) received two firearm injuries at different places of his face and for the foregoing reasons there should have been two entry wounds. However, when dead body of the deceased was subjected to postmortem examination, the doctor noted following two injuries:-

(1) Lacerated wound 3 cm x 3 cm circular in shape with inverted and burnt margins on mid right eyebrow (entry wound).

(2) A lacerated wound 6 cm x 4 cm deep going everted margins below the left mid eye on the left cheek (exit of injury No.1).

From above, it evinces that though two firearm injuries were found to be on the body of the deceased, however, according to the medical officer, one was an entry wound, whereas the other was its exit. Likewise, it is equally important to mention here that as per inquest report, prepared by the Investigating Officer, the deceased was having only two firearm injuries and that too on the front of his face. Admittedly, such opinion of the doctor as well as the detail of injuries

mentioned in the inquest report is running contrary to the stance of the complainant/petitioner. Rana Shahbaz Ahmad (complainant/petitioner) after acquiring knowledge of this anomaly, preferred to invoke the jurisdiction of learned Judicial Magistrate through an application under section 176 Cr.P.C. on 12.07.2016. It will not be out of place to mention here that besides seeking issuance of direction for the disinterment of the dead body of the deceased for medical re-examination through a Medial Board, the petitioner also attributed dishonesty not only to the medical officer but also to the Investigating Officer. It is also worth mentioning that in support of his averments made in the application under section 176 Cr.P.C. the petitioner produced the affidavits of as many as nine witnesses, who unanimously stated that the deceased, besides having two entry wounds on the front of his face was also having an exit wound at the back of his skull.

Admittedly, the above-mentioned two versions being in conflict with each other are giving rise to altogether different theories. The acceptance of one necessitates the rejection of the other. The close scrutiny of the stance of the petitioner reveals that he has burdened the initial investigator as well as the medical officer with the allegation of bringing on record dishonest and incorrect data.

7. I am not oblivious of the fact that the primary purpose of the creation/establishment of the courts is to administer justice which can best be done if correct and complete data is placed on record. Any erroneous decision, due to whatever reason, shatters the faith of the litigants on the judicial system so does it create unrest amongst them, giving rise to further crime. The public functionaries including the investigators and the medical officers are the tools provided to the courts to administer justice. If these tools become blunt and do not perform their duties in accordance with their legal obligations, the courts have all the legal powers to chisel them.

8. I feel pressing need to observe here that the investigation as defined in section 4 (1) of the Code of Criminal Procedure, 1898

means and includes all the proceedings for the collection of evidence. The purpose of the investigation, as interpreted by the courts of the country, is to discover the actual truth. By virtue of provisions of **Chapter-XXV Rule 25.2(3) of the Police Rules, 1934**, the investigation must be focused at discovering the actual facts of the case. For ready reference, the foregoing provision is reproduced below:-

“It is duty of an investigating officer to find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person.”

9. Similarly, in a criminal case more so of a murder, the primary purpose of seeking the expert opinion of the doctor is to find out the intrinsic worth of the blame put forth by a witness in regard to the role attributed to an accused. By giving his opinion, the doctor offers his humble input to the court, towards arriving at a just decision. Keeping in view the sensitivity of the task of postmortem examination, certain guidelines are provided in different text books of medical jurisprudence, out of which for ready reference, reliance can be placed to a book titled as **“A TEXT BOOK OF FORENSIC MEDICINE AND TOXICOLOGY”** authored by **DR. S. SIDDIQ HUSAIN**. In Chapter-III, which is titled as **“MEDICO-LEGAL POST MORTEM EXAMINATION”**, the object and procedure to hold an autopsy is given in detail. I do not deem it appropriate to reproduce these rules of procedure, however, succinctly stated the medical officer is bound to open all the three cavities i.e. skull, thorax and abdomen. In the case of firearm injuries, he is obliged not only to examine the body in detail but also to determine the passage of a firearm lead/bullet making ingress in the body of the deceased. He is further required to note each and every injury present on the dead body and then to give its nature. The purpose of assignment of above-mentioned duties to medical officer as well as to the Investigating Officer is primarily aimed at securing complete evidence.

In the case of unnatural death of a person, the police officer is obliged to prepare an inquest report in accordance with **Rule 25 of Chapter XXV of Police Rules, 1934**. There is no need to elaborate the importance of inquest report as it has its own significance.

10. The instant petition was mainly opposed by the learned counsel for the respondents No.4 & 5 with twofold submissions. Firstly, this is too late in the day to pass an order for the disinterment on account of the process of decomposition and secondly the maintainability of this petition in reference to the provision of section 176 Cr.P.C. by canvassing that the provision relates only to the custodial death of a person.

As regards the first objection, in my considered view, this is never too late to hold an autopsy or to pass an order for disinterment for the purposes of re-examination of a corpse. More so, when the controversy between the parties lies at the injury on the occipital bone of the deceased, the same can be discovered even after a decade. Even otherwise, medical jurisprudence does not provide any time limit for the exhumation of a dead body. I deem it appropriate to mention here that **Rule-5 of Chapter-III given by Dr. S. Siddiq Husain** in his book (mentioned supra) it is mentioned as under:-

“It is never too late to make an autopsy, no matter, how far decomposition is advanced, as information may be had from teeth, hair, injuries to bones, as fractures, bullet wounds, etc. and shots may be recovered from inside the body.”

In support of my above-mentioned view, I am further enlightened from the observations of the Hon'ble Apex Court of the country mentioned in the case of Faryad Ali v. The State (2008 SCMR 1086) wherein it was observed as under:-

“Coming to the contention of the learned Deputy Prosecutor General that the re-examination of the dead body conducted by the Special Medical Board after about 10 months of the burial, suffice it to answer that the medical jurisprudence has not provided any time limit for exhumation/disinterment of the dead body in India and England while in France the period is limited to 10 years and 30 years in Germany. Reference is made to Modi's Medical Jurisprudence and Toxicology (Chapter IV Page 90).”

As regards second objection of the learned counsel for the respondents No.4 & 5 which pertains to the maintainability of this petition, I consider it necessary to reproduce sections 174 & 176 Cr.P.C. which are as under:-

174. Police to inquire on suicide, etc. (1) The officer incharge of a police-station or some other police-officer specially empowered by the Provincial Government in that behalf, on receiving information that a person:

- (a) has committed suicide, or
- (b) has been killed by another, or by an animal, or by machinery, or by an accident, or
- (c) has died under circumstances raising a reasonable suspicion that some other person has committed an offence.

shall immediately give intimation to the nearest Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the Provincial Government, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death describing such wounds fractures, bruises and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

(2) The report shall be signed by such police officer and other persons, or by so many of them as concur therein, and shall be forthwith forward to the [concerned] Magistrate.

(3) When there is any doubt regarding the cause of death, or when for any other reason the police officer considers it expedient so to do, he shall, subject to such rules as the Provincial Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the Provincial Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.”

176. Inquiry by Magistrate into cause of death. (1) When any dies while in the custody of the police, the nearest Magistrate empowered to hold inquests shall, and, in any other case mentioned in section 174, clauses (a), (b) and (c) of sub-section (1), any Magistrate so empowered may hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police-officer, and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any of the manners hereinafter prescribed according to the circumstances of the case.

(2). **Power to disinter corpses.** Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interned, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.

From the language and more so from the following sentence used in section 176 (1) of Cr.P.C. “in any other case mentioned in section 174 (a), (b) and (c) of subsection 1” it follows that the provision of section 176 Cr.P.C., is not to be read in isolation from the provision of section 174 (1) Cr.P.C. and instead is to be considered in conjunction with it. Moreover, from the plain reading of section 176 (2) Cr.P.C. it evinces that the order of medical examination through disinterment can be passed by the Magistrate if he considers it expedient to do so. The question of expediency relates to the facts and circumstances of the case and is inflexible in nature. Likewise, I have not been able to come across any legal provision, which places embargo for a medical re-examination through disinterment more so, when it is aimed at removing any ambiguity and further to provide a correct data to the court, in order to arrive at the just conclusion. I consider it equally important to mention here that even in the **Police Rules, 1934, Chapter-XXV, Rule 34**, the rules relating to disinterment of the bodies are enumerated, the perusal of which proves that the argument of learned counsel for the respondents regarding the bar of disinterment is misconceived. For ready reference, Rule 25.34 of Police Rules, 1934 is being reproduced below:-

25.34. Disinterment of bodies: The following rules relate to the disinterment of bodies:-

- (1) An officer in charge of a police station and any superior police officer, lawfully making an investigation into the unnatural or sudden death of any person shall, on learning that the body of the deceased person has been formally buried, record in writing the information which has reached him and the grounds on which he considers it necessary that the body should be disinterred.
- (2) He shall forward the information so recorded to the nearest magistrate empowered to hold requests and ask for an order under Section 176 (2), Code of Criminal Procedure, and in the meantime shall guard the grave.
- (3) On receipt of such order, if the magistrate himself does not the disinterment, such police officer shall, on the presence of two or more respectable inhabitants of the neighbourhood, cause the body to be disinterred. Such police officer shall then comply with the provision of Section 174, Code of Criminal Procedure.
- (4) Police officers shall invariably examine witnesses to prove the identity of disinterred bodies before commencing their investigation.

- (5) When a body has lain in the grave for a period exceeding three weeks no disinterment shall be made by any police officer until the opinion of the District Health Officer has been obtained, and then only with the concurrence of the District Magistrate.

11. In my considered view, though the dead body of the deceased is buried in the grave but the blame of his death is yet alive, awaiting decision from the court. The deceased has achieved the eternal silence yet his skeleton can be a mute witness, the examination of which can narrate the true tale of injuries present on his body. The disinterment and its medical re-examination is likely to advance the cause of justice and to remove all the doubts, arising out of above-mentioned conflicting versions. If the injuries, as claimed by the petitioner are not found on the back of the skull of the deceased, it, for all practical purposes, will help the accused persons. Likewise, the court who will be assigned the task to decide the fate of the murder of Rana Israr (deceased) will be in a much better position to decide the case and that without any ambiguity.

12. In view of above, the instant petition is allowed and the order dated 03.02.2017 (passed by Area Magistrate) and order dated 28.03.2017 (passed by learned Sessions Judge, Sahiwal) are hereby set-aside. The Area Magistrate of Police Station Fateh Sher, District Sahiwal is directed to do the needful for the constitution of the Medical Board and for disinterment of the dead body of Rana Israr Ahmed (deceased) for medical re-examination, within ten days of the receipt of this order.

(Ch. Abdul Aziz)
Judge

Approved for Reporting

(Ch. Abdul Aziz)
Judge