

**HIGH COURT OF CHHATTISGARH, BILASPUR****WPCR No. 108 of 2020**(Order reserved on 14.03.2022)(Order delivered on 25.03.2022)

Babu Lal Sahu, S/o. Mani Ram Sahu, Aged About 63 Years, R/o. Village Sankara(Zok), Police Station Sankara, District Mahasamund, Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through The Secretary, Home Department, Mantralaya, Mahanadi Bhawan, Nawa Raipur, District Raipur, Chhattisgarh.
2. Inspector General Of Police, Range Raipur, District Raipur, Chhattisgarh.
3. Superintendent Of Police, District Mahasamund, Chhattisgarh.
4. Sub Divisional Officer Police, Pithora, District Mahasamund, Chhattisgarh.
5. Station House Officer, Police Station Pithora, District Mahasamund, Chhattisgarh.
6. Central Bureau Of Investigation, Mana, Raipur, District Raipur, Chhattisgarh.

---- Respondents

For Petitioner : Mr. Raghavendra Pradhan, Advocate

For State/ Respondents : Mr. Ayaz Naved, Govt. Advocate
No.1 to 5

For CBI/Respondent No.6 : Mr. Ramakant Mishra, A.S.G.

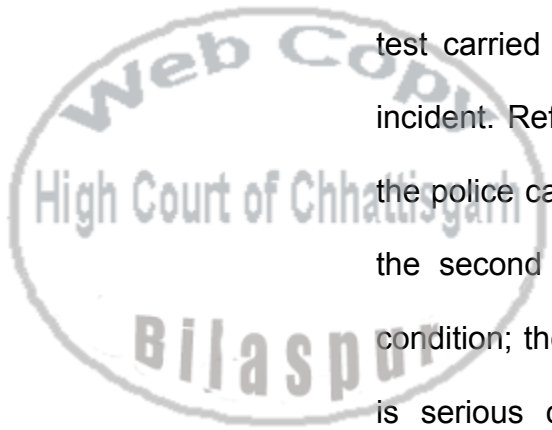
Hon'ble Shri Justice Goutam Bhaduri**CAV ORDER**

Heard.

1. Learned counsel for the petitioner would submit that there is a complete shoddy investigation was carried out by the police who are in hand in gloves with the accused. He would submit that in between the date of incident on 30.05.2018 to 31.05.2018, the incident happened. After the incident, one Suresh Khunte was made a Complainant/ Informant/ Dehatinalicy.



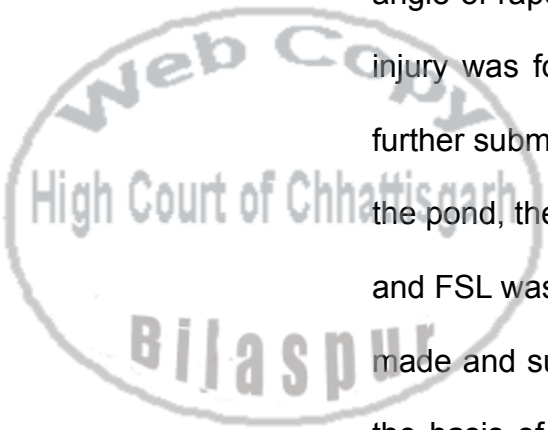
Subsequently, there was public agitation broke out for proper investigation. The house wherein four murder took place was under the CCTV surveillance. It is stated the recording of the incident would have been in the CCTV, but police did not seize the DVR to support the accused. He would submit subsequently in the press conference, the Superintendent of Police came out with a statement that the DVR has been seized, but the case diary or the final report is silent about such seizure. It is contended there is no seizure of DVR was made which is a serious lacuna as the entire incident was recorded in the DVR. He further submits that Dharmendra Bariha was made an accused by report of Suresh, who was subsequently found to be accused. He was arrested on 02.06.2018. He further submits that the narco test carried out on Dharmendra Bariha would reveal the motive and the incident. Referring to the first affidavit filed by the State, it was stated that the police came out with a stand that the DVR was not seized. However, in the second affidavit, it was stated that the DVR was not in functional condition; therefore, that is not made part of the evidence. Therefore, there is serious contradiction about the artificial intelligence of eye-witness. Referring to the narco test, the counsel would submit the earlier charge sheet was filed on 30.08.2018 and supplementary charge sheet was filed on 19.07.2019 which has changed the entire scene. Referring to the affidavits, he submits that the narco test reveal that there was an allegation of sexual assault but no investigation is carried out by the police in this aspect. He further submits that narco test also reveal that the accused armed with weapon entered into the house, this aspect has also not been investigated. Therefore, the police was helping the accused for the reason that the accused were involved in business of alcohol and drugs for which monthly payment was being made to the police, which is revealed in the narco text. He further submits that the production of the DVR before this Court in





physical form would show that on day one the DVR was seized which had recorded the entire incident. Therefore, if the DVR is manipulated, the sole intention to save the accused would be to fore, who were along with the police. He further submits that there may be chances that the DVR might have been changed during such long custody of the police, as such, further investigation requires to be done by other agencies as the police has completely failed to carryout. He further submits that in the pre test interview of narco test, the name of one Lokesh also appeared but there is no investigation on this part.

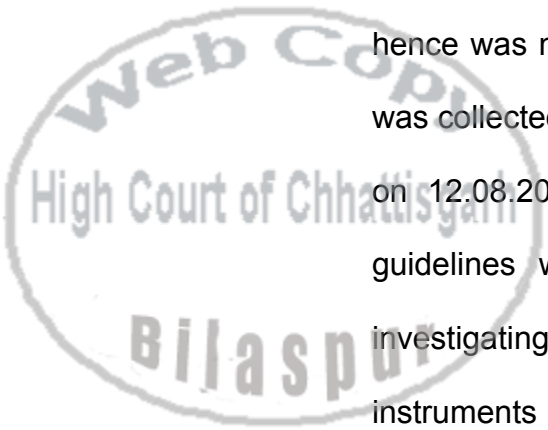
2. Per contra, learned State counsel would submit that the investigation in the angle of rape was not carried out for the reason that in the post mortem no injury was found on the private parts of one of the deceased, a lady. He further submits that the Axe which was used as weapon was recovered from the pond, therefore, on the basis of that recovery the accused were arrested and FSL was carried out. It is stated after the narco test, proper enquiry was made and supplementary chalan was filed against the accused persons on the basis of DNA test and other recovery. Therefore, the investigation as carried out was proper and the real culprits were arrested after the thorough investigation and recovery. Therefore, no further investigation would be necessary.
3. I have heard learned counsel for the parties and perused the documents filed along with the petition and the case diary.
4. The petitioner is a family head of four people who were killed i.e. his son, daughter-in-law and two grandsons. According to the petitioner, the premises on which the incident happened was under CCTV surveillance which recorded movements last for quite few days. The petitioner had referred to the photographs of the outer courtyard of the area to show that





two grandsons were playing. The said photographs however records the time at the top as date of 22.11.2017 at 4:20 P.M. The date of incident was in the intervening night of 30.05.2018 to 31.05.2018 in a Government allotted Quarter at Sub Health Center Kishanpur and there are no eye-witness. Initially the FIR was lodged by Suresh Khunte who was subsequently found to be accused. In absence of any eye-witness when the petitioner claims that the house wherein the incident happened was covered under CCTV surveillance becomes utmost important. This issue was agitated after the incident took place to examine the CCTV footage. The return which was filed by the State at para 7, it was stated that the CCTV Camera was in weak condition. It is stated that the DVR was not in functioning condition, hence was not seized and other articles which were available at the scene was collected by FSL Team and was sent for further examination. This Court on 12.08.2021 after hearing the parties has directed the State to file guidelines with regard to examination of electronic equipments while investigating the crime. It was further directed whether the electronic instruments which alleged to have been evidenced can be sent for further investigation to any Lab or not. In compliance to such direction, a second affidavit was filed by Vinod Minj and it was stated that electronic evidence containing the DVR was not in functioning condition right from the beginning and therefore the same was not made part of evidence used for prosecution. It further submitted that the evidence submitted for examination by Cyber Forensic Lab, P.H.Q., Chhattisgarh, if cannot be examined for technical limitations, the same may be sent to other more advance Forensic Lab in India by the concerned authority of the District for further examination.

5. The petitioner herein from day one was agitating that the CCTV DVR was taken away by the police immediately, but in the first affidavit the State

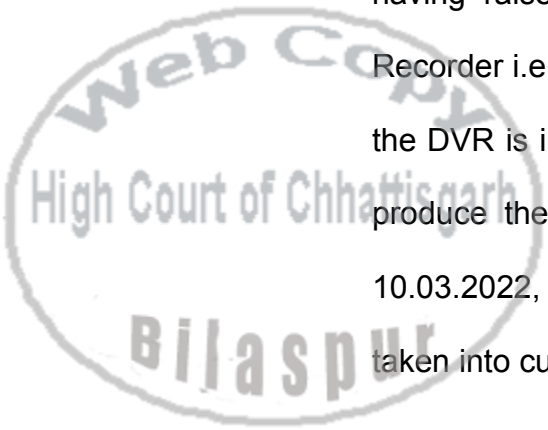




denied to have seized it and in second affidavit too, it is also not made clear that whether the said DVR was seized or not. It was stated that it was not made part of evidence. It is obvious that while making search in the crime scene, the seizure memo would be required. Though the proper seizure memo was prepared, DVR do not find place in such seizure memo. However, in the press conference of the Superintendent of Police, the extract of transcription which is filed by the petitioner, it was stated that the DVR was seized by the police and it was not rebutted.

6. During the hearing before this Court on 09.03.2022, one Vinod Kumar Minj, SDO, Pithora and Tikeshwar Hota, ASI, Pithora were present and query having raised by the Court with regard to custody of the Digital Video Recorder i.e. DVR, the police official present before the Court submitted that the DVR is in the Police Station. Therefore, the Court directed the police to produce the DVR before this Court by next date. On the next date on 10.03.2022, the sealed DVR, as was ordered was produced which was taken into custody and the case diary was also placed.

7. Perusal of the case diary do not show that the DVR was seized at any time. Therefore, the production of the DVR from the custody of the police would indicate that DVR though was seized from the crime scene, which might have recorded the incident was not produced in the charge sheet nor it was sent to any Forensic Lab. Had there been any effort to examine the functioning of the DVR, the necessary correspondence or any effort so done could have been placed before the Court. However, the fact remains that the DVR from crime scene was produced from the custody of the police, though it was not seized by seizure memo, but the police has taken the possession thereof.

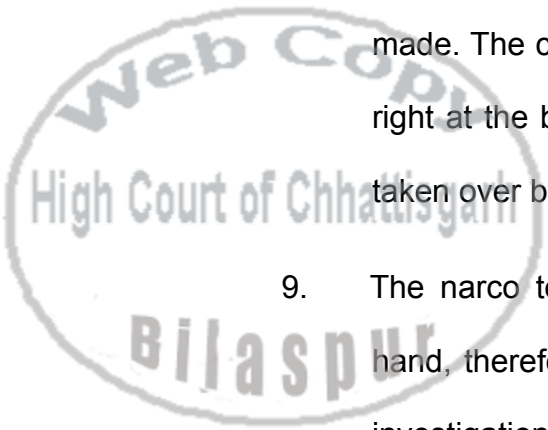




8. The narco test on which the heavy reliance is placed by the petitioner refers to the criminal background of one of the accused Suresh Khunte that he was involved in the business of alcohol and drugs. According to the narco test statement of Dharmendra Bariha, one of the accused, the motive was to commit a sexual assault of the deceased lady. The charge sheet document do not suggest that any investigation was carried out with respect to the rape by examining the dead body of the deceased during the post mortem in such line. The narco test was carried out on 04.01.2019 and thereafter the supplementary charge sheet was filed on 19.07.2019. It is also obvious that in the affidavit when the submission is made that the DVR was not clear, if it was not seized by police how such statement could have been made. The case diary do not show that the DVR was taken into possession right at the beginning after commission of crime, however physically it was taken over by the police.

9. The narco test further shows that the accused were with the weapon in hand, therefore, what was their intention i.e. for sexual assault or loot, the investigation was not carried out. Further the narco test on which the second charge sheet was filed would show presence of one Lokesh was said who was present on the spot at time of incident and was standing near the dead body of Chetan, but he has not been made the accused. Only on the basis of FSL, the charge sheet has been filed. Narco test also reveal it was deposed that Suresh Khunte used to give bribe to the police of Pithora for his illegal business, therefore, he assured other accused that nothing will happen as he has setting with the Police Station.

10. Taking into the aforesaid facts, it appears that there are certain missing links which are serious in nature and were never tried to bridge by the prosecution. The filing of the affidavit of the prosecution by the State that DVR was not seized, it was not working but subsequently production of it





from the custody in a sealed cover, which might have the recording of the incident would have removed the doubt. It was a nature of artificial intelligence which could have been clarified to which the petitioner as victim is entitled to know, as also is entitled to fair investigation with all seriousness. The deposition in the narco test which lead to catch hold of the other accused showing the proximity of one of the accused with the police of one of the accused creates a doubt.

11. Under the circumstances, prima facie, perusal of the material seized along with the affidavit of the State do not inspire confidence of fair investigation, as such, I deem it proper to direct further investigate the matter by the CBI. The copy of the DVR which are produced and placed in a sealed cover would be handed over to the CBI. The CBI would further investigate the case and shall proceed in accordance with law within a period of 4 months from the date of receipt of a copy of this order. It is further made clear that this order would not be construed as a change of circumstance for the accused who are being tried before the Sessions Court.

12. In view of the above, the petition stands disposed off.

**Sd/-
Goutam Bhaduri
Judge**

Aks

