

Criminal Revision

PRESENT: The Hon'ble Justice Ashim Kumar Roy

Judgment On: 01-02-2010.

C.R.R. No. 4631 of 2009

Ichaque Gazi

versus

The State of West Bengal

Point:

DNA test report: The report of the DNA Test whether to be supplied to the accused- Code of Criminal Procedure, 1973-S. 54A, 173.

Fact: The petitioner, who has been facing trial for an offence punishable under Section 376 of the Indian Penal Code, has filed the instant application challenging the order passed by the Ld. Judge rejecting his prayer for supply of report of DNA Test, done on the basis of his blood sample as well as the victim girl and her newly borne baby.

Held: DNA Test was done at the behest of the Investigating Agency and in terms of Section 54A of the Code of Criminal Procedure, the report of such test to be treated as the part of the document referred to in clause (a) of sub-section (5) of Section 173 of the Code of Criminal Procedure, accordingly, the said report ought to be supplied to the accused. (Paragraph – 4)

For Petitioner: Mr. Kallol Kumar Basu

Mr. Arijeet Pyne

For State: Ms. Minati Gomes

The Court:

Heard Mr. Kallol Kumar Basu, learned advocate, appeared on behalf of the petitioner as well as Ms. Minati Gomes, learned advocate, appeared on behalf of the State. Perused the materials on record.

2. Mr. Basu submitted that the present petitioner has been facing his trial for an offence punishable under Section 376 of the Indian Penal Code before the Learned Additional Sessions Judge, Fast Track, 1st Court, Basirhat, North 24-Parganas. He further submitted that it is the case of the prosecution that due

2

to the rape committed by the petitioner upon the victim girl, she became pregnant and gave birth to a child. He further submitted that after filing of the

charge-sheet, on the prayer of the Investigating Officer, blood sample was taken for DNA Test from the accused, i.e., the petitioner herein, the victim girl and her newly borne baby. Thereafter, DNA Test was done but no report of DNA Test was furnished to the petitioner. Accordingly, the petitioner moved the Court for the said DNA Test report but the learned Judge rejected such prayer.

On the other hand, Ms. Minati Gomes submitted that since the prosecution is not relying on the DNA Test report, therefore, there is no question of supplying it to the accused persons.

3. Heard the learned advocates appeared on behalf of the parties.

Considered their respective submissions.

4. It appears from the materials on record that DNA Test was done at the behest of the Investigating Agency and in terms of Section 54A of the Code of Criminal Procedure, the report of such test to be treated as the part of the document referred to in clause (a) of sub-section (5) of Section 173 of the Code of Criminal Procedure, accordingly, the said report ought to be supplied to the accused.

5. In view of above, the order impugned is set aside. The learned Court below is directed to supply the report of the DNA Test to the accused persons within fifteen days from the date of communication of this order. It is further directed, the Court shall not proceed to frame charge without supplying the DNA Test report to the petitioner.

This criminal revisional application thus, stands, allowed.

Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

(**Ashim Kumar Roy, J.**)