
(1993) 05 DEL CK 0072

Delhi High Court

Case No: Criminal Miscellaneous (Main) Appeal No. 203 of 1993

Imamuddin

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision: May 5, 1993

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 439

Citation: (1993) 3 Crimes 462 : (1993) 51 DLT 473 : (2003) 26 DRJ 520

Hon'ble Judges: Sat Pal, J

Bench: Single Bench

Advocate: K.K. Sud, K.P. Sood, Rakesh Sherawat, Gautam Kapur, O.P. Faizi, K.B. Andley and S.K. Wason, for the Appellant;

Judgement

Sat Pal, J.

(1) This is a petition filed by the petitioner for his release on bail u/s 439 of the Code of Criminal Procedure.

(2) Briefly stated the facts of the case are that Shan Mohd. who is the son of the sister of the petitioner was married to Firdosh on 7th May, 1989. The case of the prosecution is that said Firdosh was tortured by her in-laws for not bringing one motor cycle/scooter in dowry and was given a severe beating by Mrs. Zeboo Nishan (mother-in-law). Imamuddin (petitioner), his wife Shabnam, Shan Mohd. (deceased husband) and Faimuddin. Firdosh was got treated by a private doctor, namely, Dr. Parveen on 1.2.92. Since she did not improve, she was taken to Chikitsa Nursing Home, from where she was referred to Safdarjang Hospital on 2nd February, 1992 finding it a suspected case of brain hammer- age. On 10th February, 1992 at 4.55 Pm Firdosh died in Safdarjang Hospital.

(3) In this case Fir was registered on 19.12.92 at Malviya. Nagar P.S. u/s 498A/304B/34 Indian Penal Code against the petitioner, Dinu, Shan Mohd.,

Faimuddin, Smt. Zeboo Nishan and Smt. Shabnam. The aforesaid Fir was registered at the instance of Smt. Rehmati, mother of deceased Firdosh. It has been alleged by the complainant that on 10th February, 1992 she went to the house of the in-laws of her daughter Firdosh to enquire about the health of her daughter who was admitted in Safdarjang Hospital, when at about 6.00 Pm the dead body of her daughter was brought to her in-laws house. She further alleged that she was not allowed to see the dead body of her daughter and was told by Zeboo Nishan and Shabnam that her daughter has died because of pneumonia. Thereafter the petitioner Along with two other persons gave her threats to keep mum and left her near Badkali Chowk. Nagina. She further alleged that when she reached at her house, she found that the dead body of her daughter was also there. It is further alleged that when the deceased was given the last bath, some injuries were found on her body. The dead body of the deceased was buried at Nagina on 11th February, 1992. Statement of one Gulam Rusool who is a resident of the same locality, namely, House Rani, where the in-laws of the deceased lived, was re-corded by the police. In his statement Gulam Rusool has stated that he had seen that the deceased was given a severe beating by the petitioner as well as other accused and her head was banged against the wall on 1st February, 1992. The aforesaid beating incident has been corroborated by one Iqramuddin, who is also a resident of the same area.

(4) Dr. I.C. Prem Sagar of the Deptt. of Neuro Surgery, Safdarjang Hospital in his letter dated 20th July, 1992 has stated that the deceased was admitted in the hospital on 2.2.92 at 1.20 Am and was transferred to Neuro Surgery Ward on 8.2.92. It is further stated in this letter that C.T. Scan was done on 6.2.92. It is also stated that "the exact cause of acute subdural Haematoma could not be ascertained. It may be because of head injury or because of spontaneous bleed. As no history of head injury was available, we were investigating on the lines of spontaneous bleed."

(5) The local police made a preliminary enquiry on the date of occurrence but did not register any case: Thereafter the complainant filed the complaint before the S.D.M. who by his letter dated 10th June, 1992 forwarded the same to the S.H.O., Malviya Nagar, Police Station for investigation. The complainant had also addressed a complaint to the Commissioner of Police, New Delhi which was received in his office on 26th May, 1992 and was marked to the D.C.P., Crime Against Women Cell, New Delhi. The enquiry was conducted into the matter by Shri B. Lal, A.C.P., who by his report dated 30th July, 1992 came to the conclusion that deceased Firdosh died a natural death due to illness and there was no cogent reason to proceed further with the complaint. The report "was approved by the D.C.P. Crime Against Women Cell, New Delhi:

(6) Thereafter the complainant filed a CrI.W. petition bearing No.483/93. The said writ petition came up for hearing on 8.9.92 and a notice to show cause was issued on that date for 22nd October, 1992. Meanwhile, the police registered the case on

21st September, 1992 and arrested the petitioner and Din Mohd. @ Dinu. It may be pointed out here that. an application bearing C.M.406/92 u/s 482 was filed on behalf of the complainant for intervention. Though the prayer was opposed by the petitioner in their reply to this application but the learned counsel for the petitioner during the course of arguments did not press his objection and accordingly the learned counsel for the applicant was allowed to make his submissions.

(7) Mr. Sud, the learned counsel appearing on behalf of the petitioner submitted that in the present case one Mohd. Zakaria is the brain behind the complaint. The learned counsel further submitted that petitioner and Zakaria are on inimical terms and the complaint was filed by the mother of the deceased at the instigation of Zakaria. The learned counsel drew my attention to DD-26A dated 10.2.92 which indicates that on receipt of a telephonic call S.I. Virender Singh had visited the premises of the in-laws of the deceased and after making certain enquiries from Yamin (brother of the deceased) that the deceased had died as a result of natural death, no further action was taken by the Police. The. learned counsel further submitted that there is substantial unexplained delay in the registration of the Fir and the complainant did not make any complaint till the body of the deceased was decomposed. He also submitted that C.T. Scan does not show any injury of blood clots and contended that the petitioner was suffering from meningitis and the present case was of a natural death. He also contended that the Assistant Commissioner of the Crime Against Women Cell has conducted a detailed enquiry in the case and has come to the conclusion that the Firdosh died a natural death due to illness and his report was duly accepted by the Deputy Commissioner of Police of the said Cell.

(8) The learned counsel for the petitioner also drew my attention to two letters dated 12.3.92 and 18.3.92 written by Amin (brother of the deceased), copies of which were filed by the learned counsel for the petitioner on 27th February, 1993 Along with certain other documents. He submitted that these letters do not show any involvement of the petitioner and the allegations, if any, are against the other accused. He also submitted that Gulam Mohd. and Ikramuddin are alleged witnesses of beating have been introduced by the prosecution to concoct the story against the petitioner. The names of these witnesses were not mentioned in the complaint lodged by the complainant. The learned counsel contended that the delay in lodging the Fir and further delay in recording the statement u/s 161 CrI. Procedure Code casts suspicion on the entire prosecution story. In support his contention the learned counsel placed reliance in the case of [Ganesh Bhavan Patel and Another Vs. State of Maharashtra](#), ; [State of Orissa Vs. Mr. Brahmananda Nanda](#), and in the case of [Manohar Nath Kaul Vs. State of Jammu and Kashmir](#), .

(9) Mr. Andley, the learned counsel appearing on behalf of the complainant submitted that the complainant in her statement has stated that she was under great shock from the date of death of her daughter and she could lodge the

complaint only on 1st May, 1992. The learned counsel further submitted that DDNo.26A shows that the police was informed on telephone on the night of 10th February, 1992 itself regarding the unnatural death of the deceased but the local police made a cursory enquiry. He further submitted that complainant was an illiterate lady and had been approaching various authorities including S.D.M. of the area, Commissioner of Police and it was only after a show cause notice was issued in the Crl. Writ petition filed by the complainant that the case was registered by the police on 19.9.92. He also drew my attention to letter dated 20th July, 1992 of Dr. I.C. Prem Sagar wherein he has clearly opined that cause of the acute subdural Haematoma may be because of head injury or because of spontaneous bleed. He, Therefore, contended that keeping in view the the statement of the two witnesses namely Ikramuddin and Gulam Rasool coupled with the opinion of the doctor, a clear case u/s 498A/304B/34 Indian Penal Code is made out against the petitioner and other accused In support of his contention he placed reliance on a Supreme Court judgment reported in Solanki Chimanbhai Ukabhai Vs State of Gujrat , SCC(Crl.) 379. The learned counsel further submitted that the petitioner is a Special Police Official and it appears that he has. been exercising influence with the police and that is the reason the case was not registered till a show cause notice was issued by this Court. He contended that in such a case if an accused happened to be a Police Officer, he should not be released on bail. In support of his contention he placed reliance on a Supreme Court Judgment in the case of Niranjn Singh Vs Prabhakar Rajaram Kharote, 1980 Scc (Crl.)508. The said judgment was also relied upon by the learned counsel for the proposition that detailed examination of the statement of the witnesses should be avoided at the time of the consideration for grant/rejection of bail.

(10) Mr. Faizi, the learned counsel appearing on behalf of the State drew my attention to the statements of the alleged eye witnesses Ikramuddin and Gulam Rasool and submitted that these witnesses have clearly stated that the deceased was given a severe beating on 1st February, 1992 and the head of the deceased was banged against the wall. He also reiterated the submissions made by the learned counsel for the complainant.

(11) I have given my thoughtful consideration to the submissions made by the learned counsel for the parties and have perused the lower court records and other material placed before me. Though a large number of documents have been filed on behalf of the petitioner as well as on behalf of the complainant and arguments have been addressed in details, I am not inclined to deal with every document filed by the parties. As held by the Supreme Court in the case of Niranjn Singh (Supra), detailed examination of the evidence and elaborate documentation of the merits should be avoided while passing orders on bail applications.

(12) In this case two persons, namely, Ikramuddin and Gulam Rusool, who are residents of the same locality where the accused were living, have clearly alleged

that they had seen the deceased being given severe beating by the accused on 1.2.92 and her head was banged against the wall. Even Dr. I.C. Prem Sagar of Deptt. of Neuro Surgery, Safdarjang Hospital in his letter dated 20th July, 1992 has stated that the exact cause of the acute subdural haematoma may be because of head injury or spontaneous bleed. In view of the aforesaid statements and opinion of the doctor, it cannot be said at this stage that the accused is an innocent person. Though A.C.P., Crime Against Women Cell has given the report that Firdosh died a natural death, his findings are based on the opinion of Dr. I.C. Prem Sagar which has not been correctly referred to in the report. It has been stated in the report that "as the cause of acute subdural haemetoma was spontaneous bleed, no of fence of torture could be made out." Whereas Dr. Prem Sagar had stated that the cause of acute subdural haemetoma may be because of head injury or because of spontaneous bleed.

(13) As regards the delay in lodging the Fir and in recording the statement of alleged eye witnesses, it can be explained by the witnesses concerned during the trial of the case. The various judgments cited by the learned counsel for the petitioner are not relevant at this stage as the alleged eye witnesses to the beating of the deceased and other witnesses are yet to be examined. Such evidence should, however, be scanned carefully in terms of law laid down by the Supreme Court. In this connection reference may be made to a recent judgment of Supreme Court in the case of [Ganeshlal Vs. State of Maharashtra](#), .

(14) The learned counsel for the petitioner has placed reliance on two letters dated 12.3.92 and 18.3.92 allegedly written by Amin @ Yasin, brother of the deceased, in support of his contention that there is no allegation against the petitioner till the date these letters were written. But the very first sentence of the letter dated 18.3.92 reads "Kamru Aur Yusuf Aur Imamuddin, ham ne tumhara Kaya bigara that jo tum ne hamari behen ko marwa diya." Thus there is clear allegation that the petitioner and others got Firdosh killed. In the letter dated 12.3.92 it has been alleged that the husband of the deceased had been demanding a scooter from his in-laws. Thus from these two letters-. also it cannot be concluded that petitioner is innocent.

(15) In view of the above discussion, I am of the view that the petitioner is not entitled to bail particularly when the alleged eye witnesses Ikrammudin and Gulam Rusool as well as Dr. I.C. Prem Sagar are yet to be examined in the trial Court. Further this has also to be borne in mind that the petitioner is a Special Police Officer and the said alleged eye witnesses are residing in the same locality where the petitioner was residing. Accordingly, the petition is dismissed. I may, however, add that the observations given, by me hereinabove will not have any bearing on the merit of the case.

(16) Lower court records be returned forthwith.