

Maya Devi & Ors. Vs.the State & Anr.

Maya Devi & Ors. Vs.the State & Anr.

SooperKanoon Citation : sooperkanoon.com/1226498

Court : Delhi

Decided On : Nov-06-2019

Appellant : Maya Devi & Ors.

Respondent : The State & Anr.

Judgement :

\$~1 * IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

11. 10.2019 Pronounced on:

06. 11.2019 + CRL.M.C. 536/2017 & CrI.M.A. 2323/2017 MAYA DEVI & ORS.

... Petitioner

s Through Mr.Sandeep Garg, Adv. with Ms.Priya Saxena, Adv. with P-2 & 4 in person. versus THE STATE & ANR.

... RESPONDENTS

Through Mr.Panna Lal Sharma, APP for State. Mr.Deepak Vashisht, Adv. with Mr.S.P.Yadav & Mr.Mahesh Saroj, Adv. for R-2. Insp. Sanjay Bhardwaj, SHO Subzi Mandi. CORAM: HON'BLE MR. JUSTICE SURESH KUMAR KAIT

JUDGMENT

1 Vide the present petition, the petitioner seeks direction thereby directing to set aside the judgment and order dated 31.01.2017 passed by the Ld. Special Judge-CBI- 03 PC Act, Tis Hazari Courts, Delhi, in C.R. No.

titled as Ms. Versha Aggarwal versus State of NCT of Delhi & Anr. whereby the Id. Additional Sessions Judge was pleased to allow the criminal CRL.M.C.536/2017 Page 1 of 12 revision filed by the respondent No.2 and set aside the order on application under section 156(3) Cr.P.C. dated 10.08.2016 passed by the Id. Metropolitan Magistrate-07, Central District , Tis Hazari Courts, Delhi, in complaint case titled as Versha Aggarwal vs. Maya Devi &Ors. whereby the Id. Trial Court was pleased to dismiss the application of respondent No.2 under section 156(3) Cr.P.C.

2. The brief facts leading to the filing of the present petition are as stated in the complaint filed by the complainant i.e. respondent No.2 that the complainant married Pradeep Kumar Aggarwal on 01.07.2009 and after marriage she started residing at her matrimonial house consisting of petitioners, who are her mother in law (petitioner No.1), brothers in law (petitioners nos. 2-4), sister in law (nanaad) (petitioner No.6) and jaithani (sister in law) (petitioner no.5) respectively. As per the complainant i.e. respondent No.2, it is stated that on 27.11.2014, she and her husband went to their relatives at Aligarh, and thereafter proceeded to Khurja for a marriage function and both of them attended the marriage at Khurja and After marriage on 02.12.2004, the complainant's husband departed for Delhi, whereas, complainant stayed back. It came to the knowledge of the Complainant that the deceased had his last dinner prepared and cooked by CRL.M.C.536/2017 Page 2 of 12 his mother on 03.12.2014 and at around 09:00 P.M, when complainant's husband had reached home after attending the shop. On 04.12.2014 at about 12:30 p.m., she was informed about the death of her husband. The deceased was taken to the Hindu Rao hospital and was declared dead after all the formalities and medical examinations.

3. It is further submitted that in the month of August of 2015 the respondent no.2 had filed a complaint case under section 156(3) Cr.P.C. against the petitioners in the court of Id. CMM which was marked to the concerned MM for registration of FIR. Id. MM on the application and complaint of respondent no.2 had directed to the concerned Police Station to file status report i.e. ATR and accordingly status report was filed which clearly show that it was a Natural Death. Considering the status report and other documents, the Id. MM vide its order dt. 10.08.2016

dismissed the application by observing that in the chemical analysis of viscera, no poisonous substance was detected and as per the final opinion given by the doctors of the Hindu Rao Hospital, the cause of death was septic shock due to lung infection and therefore medical evidence collected by the police during the inquiry was sufficient to rule out the possibility of any foul play. Accordingly, matter was listed for leading complainant evidence with liberty CRL.M.C.536/2017 Page 3 of 12 to the complainant to substantiate her allegations. Being aggrieved respondent no.2 preferred a Criminal Revision which was marked and assigned to Ld. ASJ, Delhi and vide order dt. 31.01.2017 the court was pleased to set aside the order dt. 10.08.2016 passed by the Ld. MM.

4. In the present case the statement of the mother of deceased Maya Devi was recorded by the IO of the case during the inquest proceedings on 04.12.2014 in which, she stated that his third son i.e. deceased was residing on the first floor of the house and he was running a cloth shop in Bhajanpura. On 03.12.2014 he came back from the shop at around 10:00 P.M, since his wife and children had gone to Aligarh, therefore she cooked food for him at around 10:00 P.M , thereafter at around 02:00 in the night she heard noise from the room of his son as if something had fallen down. When she went up, she found the room was locked from inside. She called him once or twice, thereafter she came back. At around 12:00 P.M., she again went to the room of his son, as he had not woken up, though he used to go to his shop at around 11:00 A.M in the morning. However, when she pushed the door, the latch opened and she saw her son was lying on the ground and his hands and legs were stiff. She raised an alarm, his son Pankaj and tenant took him to the hospital. His son was a teetotaller and non CRL.M.C.536/2017 Page 4 of 12 smoker, he was not having any problem of epilepsy, though he had the problem of disorientation. At that stage, she was not having suspicion upon anyone pertaining to the death of his son. On the same day statement of his son Pankaj was also recorded, he also gave a similar version. The statement of the present complainant was also recorded on 05.12.2014 by the same IO ASI Bacchu Singh in which she had stated that she had gone to attend the marriage of her relative at Aligarh and on 04.12.2014 she received a telephone call from his Jeth Sanjay Jain that her husband had died, but she was not having any suspicion upon anyone regarding the death of the deceased. Same was the

statement of father of the complainant Kailash Chander Aggarwal recorded on 05.12.2014 in which he also stated that he was not having any suspicion upon anyone.

5. However, it is the contention of Ld. Counsel for the complainant that though no poison was detected in the viscera report, but there are many kinds of poisons. The presence of which could not be detected, even in the viscera report. In support of the said contention, learned counsel has also relied upon the judgment of High Court of Madras titled as Ponnusamy vs. State by Inspector of Police. CRL.M.C.536/2017 Page 5 of 12 6. In this context, the observation made by the Honble Supreme Court in Mahabir Mandal and Others Vs. The State of Bihar: AIR 1972 SC1331 which is relevant, is to be noted

"31. Empty reference has been made by Mr. Charl to report dated December 23, 1963 of the Chemical Examiner, according to whom no poison could be detected In the viscera of Indira deceased. This circumstance would not, In our opinion, militate against the conclusion that the death of the deceased was due to poisoning. There are several poisons particularly of the synthetic hypnotics and vegetable alkaloids groups, which do not leave any characteristics signs as can be noticed on post-mortem examination"

32. This observation, in our view, would squarely apply to the facts of the present case. The above observation of the Supreme Court was based on the reference made in Modi's Medical Jurisprudence and Toxicology. Those references were also referred to by the Apex Court, which are as follows:

"It is quite possible that a person may die from the effects of a poison, and yet none may be found In the body after death, if the whole of the poison has disappeared from the lungs by evaporation, or has been removed from the stomach and intestines by vomiting and purging, and after absorption has been detoxified, conjugated and eliminated from the system by the kidneys and other channels. Certain vegetable poisons may not be detected in the viscera, as they have no reliable tests, while some organic poisons, especially the alkaloids and glucosides, maybe oxidation during life or by putrefaction after death, be split up into other substances which have no characteristics their identification."

reactions sufficient for CRL.M.C.536/2017 Page 6 of 12 33. The observation would make it clear the poison like that of oleander poison may not normally be detected in the viscera as they have no reliable testes. Moreover, it is seen from this observation that the whole of the poison would disappear from the lungs by evaporation or removed from the stomach and intestines by vomiting and purging.

7. Learned counsel for the respondent no.2 has drawn the attention of this court towards the photographs of the deceased, which were taken immediately after his death, from which it is revealed that the face of the deceased had turned into Blueish colour. He has also drawn the attention of this court towards the MLC dated 04.12.14 prepared at Hindu Rao Hospital in which also the examining doctors had observed regarding stiffening of the body as well as blue discoloration of the same. Therefore, it is apparent that the body of deceased turned into blueish colour immediately after his death when he was taken to Hindu Rao Hospital, where he was declared brought dead.

8. On the other hand Ld. Counsel for petitioner has argued that deceased had died a natural death as is evident from the viscera report as well as post- mortem report, wherein his cause of death of has been opined as Septic Shock consequent to lung infection. The complainant also did not make any complaint to the police immediately after the incident alleging foul play. He CRL.M.C.536/2017 Page 7 of 12 has further argued that the complainant has made her present complaint only in order to harass the petitioner and to extract money and property from them.

9. I have gone through the rival contentions. It is the admitted case of the mother of the deceased as well as his brother that the deceased was hale and hearty prior to his death and he was not suffering from any major ailment. He was also a teetotaller and non-smoker. However, it is not clear what caused his immediate and sudden death on 04.12.14. The initial investigation done by the police also does not appear to be proper, as though the Mobile Crime Team was called to the spot and it is also mentioned by the crime team in its report dated 05.12.2014 that since deceased had already been taken to the hospital, though stool and vomit were also present in the kitchen, yet the said stool and vomit were not captured, or seized and were preserved properly for their forensic evaluation, as it would have

been the best piece of additional evidence to find out, whether any external substance had been consumed or had been given to the deceased which may have been disgorged by him by vomiting and by passing stool.

10. From above, it appears that the said crime team had only done some sort of perfect investigation at the spot for the sake of doing it, though it was CRL.M.C.536/2017 Page 8 of 12 their duty to preserve the vomitus and the stool of the deceased, which would have also helped in finding out the cause of death. No doubt, in viscera report dated 19.02.2015, no poison could be detected and in the final Post-mortem Report, cause of death has been opined as 'Septic Shock consequent to lung infection. However perusal of the post-mortem report dated 05.12.14 shows that with regard to the findings in the lungs, the forensic expert who had conducted the post-mortem had reported "Exudes pus on cut section in upper lobe". He had kept the opinion pending regarding the cause of death pending the viscera report; however he should have given initial cause of death without waiting for the viscera report as a preliminary finding.

11. Thus the court below observed that practice of keeping the opinion on cause of death pending viscera report cannot be countenanced, forensic expert should give his initial opinion regarding the cause of death immediately, so as to give the definite direction to the I.O., i.e. by providing him the coordinates in which he should investigate and should not wait for inordinate period of time for the viscera report to arrive at and to give an opinion regarding the cause of death. CRL.M.C.536/2017 Page 9 of 12 12. Further observed, though in some cases it may not be possible to give such an opinion without viscera report. Taking recourse to such kind of practice, wastes the precious initial time of the investigating agency in pursuing the investigation in a proper direction. This precious time which is so lost can lead to disappearance of vital evidence.

13. Also observed, the post-mortem expert has also not opined in a clear way that the pus which was found in the upper lobe of his lung was of such a nature, which could have caused sudden and immediate death of the deceased, who was otherwise hale and hearty and was non-smoker as well as teetotaler, nor suffering from any pre-existing illness of respiratory track. Further, the lungs were not

preserved for histopathology, in view of the presence of pus in the lungs which could have also shed light on the cause of death. He has nowhere given any clear indication in his postmortem report that what was the kind of ailment the said pus could cause resulting into immediate death of the deceased due to septic shock. This vital aspect is totally missing in the post-mortem report, which is of paramount importance in this case.

14. Though, initially the complainant had also not raised any suspicion upon anyone regarding the cause of death of her husband. However, she CRL.M.C.536/2017 Page 10 of 12 may have later on realized that there are number of suspicious circumstances, shrouded in mystery, which have not been properly explained, that is why she had filed complaint before the court praying it to give directions U/s 156(3)CrP.C to register an FIR.

15. Accordingly observed, the aforesaid circumstances, clearly raise lot of suspicion in the facts of the present case, which can only be dispelled on thorough investigation by the investigating agency/police for which field investigations would be required including recording the statement of the relevant witnesses, which cannot be done by the complainant.

16. In the present case, it will also be expedient in the interest of justice that appropriate medical board is constituted by the concerned authorities to find out the exact cause of death of the deceased i.e. to find out whether the pus which was found in the upper lobe of his lungs could cause sudden and immediate death, though not suffering from any pre-existing illness, as has been in this case and could have caused turning of his body into blueish colour, as it is apparent from the photographs and MLC placed on record.

17. In the present case, the complaint clearly disclose(s) the commission of cognizable offence(s) and the matter needs thorough field investigation as well as aid of scientific and forensic investigation. Therefore, Ld. MM CRL.M.C.536/2017 Page 11 of 12 instead of himself taking the cognizance of the matter should have straightaway directed the police to inquire into the matter, which is primarily the duty of the police in these intricate matters.

18. Accordingly, Ld. Trial Court is directed to direct the concerned SHO to register FIR and investigate under the appropriate provision(s) of law U/s 156(3)Cr.P.C after one week of receipt of this order. However, SHO/IO shall not straightaway jump to arrest any of the accused persons on mere registration of FIR in this case, unless and until cogent and reliable evidence/material is find out during the investigations against the accused persons and that too with permission in writing of the Joint CP/DCP concerned, who shall also give detailed reasons for the same.

19. In view of above, the petition is disposed of. Crl.M.A. No.2323/2017 20. In view of the order passed in the present petition, the application has been rendered infructuous and is accordingly, disposed of. (SURESH KUMAR KAIT) JUDGE
NOVEMBER06 2019/ab CRL.M.C.536/2017 Page 12 of 12

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com