

Stebert Kumar Vs. State of Kerala

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Court : Kerala

Decided On : Dec-19-2014

Judge : Honourable Mr. Justice B.Kemal Pasha

Appellant : Stebert Kumar

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE B.KEMAL PASHA FRIDAY, THE 19TH DAY OF DECEMBER 2014 28TH AGRAHAYANA, 1936 CrI.MC.No. 6464 of 2014 ----- SC15702014 OF 1T ADDITIONAL SESSIONS JUDGE, THIRUVANANTHAPURAM CRIME NO.144/2012 OF VIZHINJAM POLICE STATION, THIRUVANANTHAPURAM PETITIONER(S)/CW2: ----- STEBERT KUMAR, AGED 53 YEARS, S/O RAJENDRAN, ST. JUDE HOME, KOTTAPPURAM P.O., VIZHINJAM, THIRUVANANTHAPURAM. BY ADVS. SRI. S. RAJEEV SRI. K. K. DHEERENDRA KRISHNAN RESPONDENT(S)/STATE: ----- 1. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682031. (CRIME NO. 795/2012 OF VIZHINJAM POLICE STATION, THIRUVANANTHAPURAM; 744/CR/HW1/12 OF CBCID, THIRUVANANTHAPURAM; SC NO. 1570/2014 OF FIRST ADDITIONAL SESSIONS JUDGE, THIRUVANANTHAPURAM. * ADDL. R2 TO R8 IMPLADED.

2. ADDITIONAL DIRECTOR GENERAL OF POLICE, (CRIMES), THIRUVANANTHAPURAM.
3. SRI.N.JAYAKUMAR, DEPUTY SUPERINTENDENT OF POLICE, CBCID-HHW-I, JAWAHAR NAGAR, THIRUVANANTHAPURAM.
4. JOSE LOPEZ, MINI HOUSE, OOTTICKALAPARAMBU, NEAR VIZHINJAM OLD BRIDGE, VIZHINJAM DESOM, VIZHINJAM VILLAGE.
5. VAREETHA, MINI HOUSE, OOTTICKALAPARAMBU, NEAR VIZHINJAM OLD BRIDGE, VIZHINJAM DESOM, VIZHINJAM VILLAGE. Msv/ -2- -2- CrI.MC.No. 6464 of 2014 -----
6. PRAFINE LOPEZ, MINI HOUSE, OOTTICKALAPARAMBU, NEAR VIZHINJAM OLD BRIDGE, VIZHINJAM DESOM, VIZHINJAM VILLAGE.
7. SHALOM LOPEZ, MINI HOUSE, OOTTICKALAPARAMBU, NEAR VIZHINJAM OLD BRIDGE, VIZHINJAM DESOM, VIZHINJAM VILLAGE.
8. MINI @ ASHA THOMAS, MINI HOUSE, OOTTICKALAPARAMBU, NEAR VIZHINJAM OLD BRIDGE, VIZHINJAM DESOM, VIZHINJAM VILLAGE. * ARE IMPEADED AS ADDITIONAL R2 TO R8 SUO-MOTU AS PER

ORDER

DATED 17.11.2014 IN CRL.M.C.NO.6464/2014. R1-R3 BY SRI.ASIF ALI, DIRECTOR GENERAL OF PROSECUTION R4-R8 BY ADVS. SRI.P.VIJAYA BHANU, SENIOR ADVOCATE SRI.V.C.SARATH SRI.THOMAS J.ANAKKALLUNKAL THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 19.12.2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: msv/ CrI.MC.No. 6464 of 2014 -----

APPENDIX PETITIONER(S)' ANNEXURES: ANNEXURE I: TRUE COPY OF THE FINAL REPORT IN CRIME NO.795/12 WHICH IS NOW PENDING BEFORE THE I ADDL. SESSIONS COURT, THIRUVANANTHAPURAM, AS SC NO.1570/14. ANNEXURE II: TRUE COPY OF THE POSTMORTEM CERTIFICATE IN CRIME NO.795/12. ANNEXURE III: TRUE COPY OF CRIME NO.1472/2012 OF VIZHINJAM POLICE STATION. ANNEXURE IV: TRUE COPY OF THE MEDICAL

CERTIFICATE ISSUED FROM COSMOPOLITAN HOSPITAL DATED 16.09.2014.
RESPONDENT(S)' ANNEXURES: NIL //TRUE COPY// P.S.TO JUDGE Msv/ [CR]
B.KEMAL PASHA, J.

..... CRL.M.C. No.6464 of 2014
..... Dated this the 19th day of December,
2014

ORDER

Hyzel Stuwert, a young lady in the beginning of her youth, was found dead in suspicious circumstances at the matrimonial home, during the night of 06.07.2012. The unfortunate father of the girl has come up with this Crl.M.C. under Section 482 Cr.P.C. seeking an expeditious disposal of S.C.No.1570/2014 for offences punishable under Sections 498A, 304B and 201 read with Section 34 of the Indian Penal Code pending before the First Additional Sessions Court, Thiruvananthapuram, in respect of her death.

2. The case forwarded by the investigating officer CRL.M.C.No.6464 of 2014 -:

2. :- through the final report in Crime No.795/2012 of the Vizhinjam Police Station, the investigation of which was subsequently handed over to the Crime Branch who re- registered the case as Crime 744/CR/HHW-1/12, in short, is as follows: Deceased Hyzel Stuwert, daughter of the petitioner herein, while she was a student of the Mar Ivanius College, Thiruvananthapuram, was enticed by the first accused in the year 2007. She went along with him and they resided together at several places. Thereafter, the first accused, and A2 to A5, who are the mother, brothers and sister of the first accused, started demanding dowry from the petitioner, for solemnizing the marriage. As the petitioner had no other go than to heed to their demand for solemnizing the marriage of his daughter, he gave 55 sovereigns of gold ornaments and an amount of 8 lakhs as dowry to the first accused. Three months after the marriage the first accused went to gulf in connection with his job. Subsequently, Hyzel Stuwert developed ailments to her
CRL.M.C.No.6464 of 2014 -:

3. :- kidney and heart. She was not provided with medical treatment or medicines. She was not given any rest and she was burdened with all the heavy works at the house. She was not being permitted to go to her house or to meet her relatives. The first accused returned from gulf. The other accused gave him false and exaggerated versions regarding the defects which they could find in the victim. On hearing it, the victim was being severely beaten up by the first accused. In the mean time, some properties of the parents of the victim were acquired for the development of the Vizhinjam Port, for which the parents got an amount of 1= crores. On coming to know about it, the accused directed the victim to procure an amount of 50 lakhs more, by way of dowry from it. Even though the parents of the victim paid an amount of 5 lakhs more, the victim was being continuously tortured and harassed by demanding 50 lakhs.

3. On 04.07.2012 the deceased had attended the CRL.M.C.No.6464 of 2014 -:

4. :- funeral of the son of her mother's elder sister. As she was little bit late in returning, she was severely beaten up by the first accused. As she could not withstand the harassment, she allegedly attempted to commit suicide. On seeing it, the first accused called A2 to A5 and in their presence she was severely beaten up. She was slapped and fisted repeatedly on her cheeks and lips. It is alleged that after leaving the deceased alone, all the accused went out. During that time, in between 7.30 p.m. and 8.30 p.m. she committed suicide by hanging on the ceiling fan in the bed room situated on the first floor of the building. It is alleged that on seeing it, the first accused called A2 to A5 and all of them cut and removed the rope and took her to the Community Health Centre, Vizhinjam. The accused had allegedly concealed the fact of hanging by the deceased and told the doctor that she was suffering from heart attack. From there, she was taken to Ananthapuri Hospital where she allegedly died on 07.07.2012 at 2.30 a.m. According to the investigating CRL.M.C.No.6464 of 2014 -:

5. :- officer, it is dowry death within the meaning of Section 304B IPC and accused have committed the offences punishable under Sections 498A, 304B and 201 read with Section 34 IPC.

4. From the very beginning, there was a lethargic attitude on the part of the local police in conducting the investigation. It seems that the accused are highly influential and they have influenced the Police. Even though the postmortem certificate has revealed very serious injuries all over the body of the deceased, nothing was done by the Police. The petitioner herein was running from pillar to post to get the matter properly investigated. Ultimately, some how, the investigation was handed over to the Crime Branch. The Crime Branch Dy.S.P. completed and concluded the investigation and laid the final report as aforesaid.

5. According to the petitioner, all along he has suspected the unnatural death of his daughter as a clear case of murder. All his cries were unheard. According to the CRL.M.C.No.6464 of 2014 -:

6. :- petitioner, his wife, who was a prime witness in the case, died due to mental pain on account of the tragic death of their daughter. According to the petitioner, he strongly believes that his daughter was brutally murdered by the accused. CW8 in the case is a prime witness and it seems that she was terribly attacked by the accused with a view to disuading her from giving evidence in the case, for which, Crime No.1472/12 of the Vizhinjam Police Station, was registered against the accused for the offences punishable under Sections 341, 294(b), 506(i) and 323 read with Section 34 IPC and the same is pending as C.C.921/2013 before the Judicial First Class Magistrate-II, Neyyattinkara. According to the petitioner, the accused who have money power and muscle power have influence over the Police, and that they have intimidated the witnesses and are trying to protract the trial of the case in order to win over the witnesses by threatening and intimidating them. The petitioner is also undergoing treatment for heart ailments CRL.M.C.No.6464 of 2014 -:

7. :- and other illness related to old age. He wants to see that justice is done in the matter and that is why he has approached this Court to have a direction to the court below for expeditious disposal of the case.

6. While dealing with the matter, this Court has gone through the copy of the postmortem certificate of the victim produced as Annexure II by the petitioner. The following ante-mortem injuries are noted on the body:

1. " Abrasion 1.3x0.5cm on the outer aspect of left side of lower lip, 1.5cm outer to midline and 0.7cm above lip margin.
2. Three contusions 6.5x0.3cm, 3.7x0.3cm and 2.5x0.5cm 1.5cm and 2.2cm apart, obliquely placed on the front of right side of neck, the lower inner end of the inner smaller one was in the midline and 5.5cm below chin.
3. Two abrasions 3.5x0.2cm and 2.5x0.2cm 1.5cm apart, oblique and parallel on the right side of front of neck, the upper inner end of the smaller one 2.2cm outer to midline and 5cm below the lower border of jaw bone and were CRL.M.C.No.6464 of 2014 -:
8. :- in-between the contusion of injury no.(2).
4. Abraded contusion 13.7cm long oblique, with contusion of margins obliquely placed on the left side of neck the lower inner end 5cm below chin and 1.7cm outer to midline (1.3cm broad) with a small extension 1.5x0.2cm long from the upper margin towards midline, and 1.5cm below the angle of jaw bone (0.5cm broad) and 2.5 cm below the left ear (0.5cm broad). Subcutaneous tissue underneath showed corresponding contusion.
5. Contusion 4.5x0.8cm, oblique on the left side of neck and the inner end was 1.5cm outer to lower margin of injury no. (4) and merging with it.
6. Abraded contusion 6cm long, oblique on the right side of neck, the lower inner end 8.5cm outer to midline and 5cm below the angle of jaw bone. Flap dissection of neck was done under a bloodless field. Contusions (i) 0.8x0.5cm on the right side of neck 1.3cm outer to midline and 4cm below the lower border of jaw bone (ii) 2.5x0.5x0.3cm, on the right side of neck, CRL.M.C.No.6464 of 2014 -:
9. :- 2.5cm outer to midline and just below jaw bone (iii) 2.8x1.7x0.4cm involving the lower part of superior belly of omohyoid (iv) upper end of left sterno hyoid muscle over an area 5x3cm (v) involving the upper half of sternohyoid, sternothyroid and thyrohyoid muscle and adjoining soft tissue extending upto the lower border of jaw bone. Lower attachment of the clavicular head of right sternomastoid muscle showed haemorrhage. Petechiae present in the epiglottis

and pharynx and larynx. Other neck muscles, bones, cartilages and blood vessels appeared normal.

7. Two abraded contusions 6x2 to 3.5cm narrow at the lower end 5.5x1 to 1.5cm narrow at the upper end, converging together at the lower end placed on the front of chest across the midline and the lower end 7cm above stomach pit.

8. Two contusions 9.5x0.2cm and 6.5x0.3cm 0.5cm apart, oblique and parallel, on the left side of lower part of chest and abdomen, the lower inner end of the larger one was 0.7cm outer to midline and 4cm below stomach pit. The CRL.M.C.No.6464 of 2014 -:

10. :- subcutaneous tissue and muscles showed infiltration over an area of 3.9x2.7x1.7cm.

9. Contusion 4.5x4.5x0.8cm, on the left side of chest, the lower end 2cm outer to midline and 11cm below the inner end of collar bone.

10. Multiple irregular abraded contusions over an area of 12x7.5cm, on the front of lower part of chest and upper part of abdomen and in between the apex of the injury no.(7) and injury no.(8).

11. Contusion with petechiae 3x2cm involving the whole thickness on the root of right atrium at the entry of pulmonary vein into the atrium.

12. Contusion with petechiae 1.5x1cm superficial at the root of right auricle.

13. Contusion of left dome of diaphragm over an area of 3.3cm involving the whole thickness just outer to the opening of inferior venacava.

14. Superficial contusion involving the left lobe of liver over an area of 2.5x0.5cm on the upper surface and 2cm inner to left margin and 5cm below the upper border.

15. Contusion 10x5x1.2cm involving the CRL.M.C.No.6464 of 2014 -:

11. :- outer aspect of right ankle and adjoining foot.

16. Contusion 3.5x2.5x1cm on the inner aspect of left ankle.
17. Contusion 1.7x1x0.3cm on the inner aspect of left leg. 5cm below knee.
18. Superficial contusion 0.8x0.5x0.3cm on the front of left thigh 18cm above knee.
19. Contusion 1.5x1.2x0.3cm on the back of right wrist.
20. Three contusions 7.5x1.2cm each 0.3cm and 1cm apart on the outer aspect of left arm, the upper one 6.5cm below the top of shoulder.
21. Contusion 3.5x0.8cm, superficial on the outer aspect of left arm 21cm above elbow.
22. Contusion 0.7x0.5x0.3cm, on the inner aspect of left arm 21cm above elbow.
23. Multiple abrasions over an area of 13x10.5cm, on the left side of chest and abdomen 10cm outer to midline and 28cm below collar bone.
24. Contusion 2x1x0.5cm on the inner aspect of right arm, 11cm below the front fold of armpit. CRL.M.C.No.6464 of 2014 -:

12. :- 25. Fracture of sternum between manubrium first pieces of body.

26. Fracture of 4th and 5th ribs on the left side at the angle." 7. On going through the postmortem certificate it can be seen that there is not even an inch of space in her body which is free from injuries. There were several contusions all over her body which clearly indicate that she was severely beaten up. There were severe internal injuries. There were multiple abraded contusions 12 x 7.5 cm on the front of lower part of chest and upper part of abdomen. There was contusion on diaphragm. There was contusion involving the left lobe of liver. There were multiple abrasions over an area of 13 x 10.5 cm on the left side of chest and abdomen. Apart from all the above, there were several contusions on her limbs and other parts of the body. Her sternum was fractured. There were fractures on 4th and 5th ribs on the right side. Can it be believed that a person who has sustained these much of ante-mortem injuries could CRL.M.C.No.6464 of 2014 -:

13. :- climb over some thing in order to reach the fan on the roof and to hang for committing suicide? 8. On seeing these much of injuries in the postmortem certificate, this Court has assumed jurisdiction under Article 226 of the Constitution of India, relying on the decision in M/s Pepsi Foods Ltd. v. Special Judicial Magistrate [AIR1998 SC128. It is settled law that High Court can exercise its power of judicial review in criminal matters. The nomenclature under which the petition is filed is not quite relevant and that does not debar the Court from exercising its jurisdiction which otherwise it possesses.

9. This Court has impleaded Additional Director General of Police(Crimes) as additional R2, Sri.N.Jayakumar, Deputy Superintendent of Police, CBCID- HHW-I, Jawahar Nagar, Thiruvananthapuram, who filed the final report in the case, as additional R3 and the accused as additional respondents 4 to 8.

10. Heard Sri. S. Rajeev, the learned counsel for the CRL.M.C.No.6464 of 2014 -:

14. :- petitioner, Sri.P.Vijayabhanu, learned Senior Counsel for the accused who are additional respondents R4 to R8 and Sri.Asaf Ali, the Director General of Prosecution.

11. The learned Senior Counsel for Additional respondents has made an attempt to explain the antemortem injuries found on the body of the deceased as injuries, which have resulted from resuscitation attempts resorted to by doctors to resuscitate the deceased who was suffering from heart ailments. The said explanation can only be taken with a pinch of salt. Can it be believed that injuries to diaphragm, liver etc. were caused in such attempts by doctors. Fractures on sternum and two ribs on the right side were also there. Injuries all over the body from face to feet were there.

12. If, as a matter of fact, the victim had hung herself, why the accused had concealed the said fact? Can it not be a case wherein the deceased was hung by the accused thinking that she was dead on the infliction of such severe CRL.M.C.No.6464 of 2014 -:

15. :- injuries all over her body? It seems that the investigating officer has not even thought of any such possibilities. The whole investigation is shabby. On going through the explanation given by the investigating officer, it seems that he has laboured much to take out the offence from the category of murder. It seems that the investigating officer has believed and relied on the versions of the accused and has not taken care of the circumstances involved in the crime. In a case where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and if it is shown that soon before her death she was subjected to cruelty and harassment by her husband or any relative of her husband for any demand for dowry, it will constitute an offence within the meaning of S.304B IPC. Even if she is murdered, the offence under Section 304B also will lie in the matter, over and above the offence under Section 302 IPC. This Court is not making an opinion as to CRL.M.C.No.6464 of 2014 -:

16. :- whether an offence under Section 302 is there in this case or not. At the same time, this Court is of the view that the investigation conducted by the present investigating officer, who is the 3rd additional respondent herein, was not proper and adequate. The apprehension forwarded by the petitioner seems to be genuine.

13. Sri. Asaf Ali, the learned Director General of Prosecution, has fairly conceded that the investigation was not on proper lines and there are lacunae in the investigation. The learned DGP has also considered the contents of the postmortem certificate. The learned DGP has undertaken that a fair investigation can be conducted by the Crime Branch itself and the Superintendent of Police, Crime Branch will carry out the investigation by himself or by making use of a team of high officers under him. Such team shall not include the 3rd additional respondent herein.

14. Matters being so, the final report filed by the 3rd additional respondent in this case is liable to be quashed. CRL.M.C.No.6464 of 2014 -:

17. :- The Superintendent of Police, Crime Branch, by himself or with the assistance of a team under him shall conduct a further investigation in the matter

by himself or by making use of a team of high officers under him, and such investigation shall be completed within a period of three months from today and he shall file a final report in the matter. In the result, this CrI.M.C. is disposed of by quashing the final report filed by the 3rd additional respondent and by directing the Superintendent of Police, Crime Branch to conduct a further investigation in the matter. He shall complete such investigation and shall file a final report in the matter, as expeditiously as possible, at any rate, within a period of three months from today. Sd/- B.KEMAL PASHA, JUDGE ul/- [True copy] P.S. to Judge

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