

Kashmeri Devi Vs. Delhi Administration and ors.

Kashmeri Devi Vs. Delhi Administration and ors.

SooperKanoon Citation : sooperkanoon.com/688984

Court : Delhi

Decided On : Mar-10-1987

Reported in : 1988CriLJ1649; 32(1987)DLT87; 1987(13)DRJ1

Judge : Jagdish Chandra, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 439(2)

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 1397 of 1986

Appellant : Kashmeri Devi

Respondent : Delhi Administration and ors.

Judgement :

Jagdish Chandra, J.

(1) By means of this application moved under Section 439(2) of the Code of Criminal Procedure, 1973 Smt. Kashmeri Devi wd/o Gopi Ram (deceased) prays for the cancellation of the bail already granted to respondents No. 2 and 3 who are Sub-Inspectors of Police (under suspension) of Police Station Patel Nager, New Delhi. They were granted bail on 2-9-1986 by Shri V.S. Aggarwal, Additional Sessions Judge in the case Fir 336 of 1986 under Sections 304/342/34 Indian Penal Code of Police Station Patel Nagar-. Another co-accused Constable Jagmal Singh was declined bail on 5-9-1986 by Shri S.M. Aggarwal, Additional Sessions

Judge but he was subsequently granted bail by Shri N.C. K.ochhar, Sessions Judge (as his Lordship then was) palpably on the ground that when his two co-accused with higher status had been granted bail , bail should not be denied to him.

(2) The first information report in this case has been recorded on the statement of one Sudesh Kumar according to whom on the night of occurrence he was sleeping in his house at about 10.45 P.M. on 22-8-1986 when respondents 2 and 3 Sub-Inspectors Satish Kadian and Inder Singh Rana along with two constables came there and without any enquiry or reason started beating him. On hearing the noise his maternal uncle Gopi Ram (deceased) also came there but those police officers also started giving beating to him without any enquiry and both of them were then taken to police station Patel Nagar and they were beaten there also with iron rods and dandas. Gopi Ram died as a result of that beating.

(3) It is alleged that in order to save themselves against the murder charge these police officers destroyed the evidence against them by cremating the body of the petitioner's husband at the cremation ground without handing over the same to the petitioner-wife or his kith and kin and also forged certain documents with the help of Sudesh Kumar who was pressurised to put his thumb impression on the manipulated statement before the doctor of Ram Manohar Lohia Hospital, at post-mortem centre as well as at the cremation ground, showing that the body of the deceased was brought by him when in fact it had been brought by the respondents/Sub Infectors of police and their co-accused police officials and that the threat held out by them to Sudesh Kumar was that he would also be killed like his maternal uncle in case he did. not state before the doctors according to their dictates. It is further alleged that Sudesh Kumar being in police custody and under the terrible shock of the cruel death of his maternal uncle at the hands of these police officers which scene of beating to death had been witnessed by him and as he was also the victim of cruel beating by those police officers, yielded to their threat and gave statements according to their dictates before the doctors or at the cremation ground wherever these police officers desired him to make statement. It is further alleged that in view of the aforesaid threat and the aforesaid circumstances through which he was passing he was accordingly made to state

before the doctor of Ram Manohar Lohia Hospital that he had brought the body of the deceased from the park where he had been beaten to death by some other persons as he was addicted to taking ganja etc. He was then made to make a similar statement before the officials at post mortem centre and also made to sign in the register kept at the cremation ground in order to show that he had brought the dead body to the cremation ground.

(4) It is also alleged that the police officers wanted to hush up the crime by cremating the dead body themselves, but the cries of the petitioner assembled the kith and kin and the neighbours of the deceased together who gheraoed the Police Station Patel Nagar and ultimately compelled the police officers to register a case against the accused police officers including respondents 2 and 3 against their wishes under Sections 302/342/34 Indian Penal Code while they ought to have registered the case even under Sections 201/468 Indian Penal Code. It is further alleged that the Crime Branch which is the Investigating Agency in this case changed the offence from Section 302 to Section 304 IPC within a couple of days also by taking over the investigation of the case to facilitate the accused persons in order to obtain bail easily. The petitioner apprehends no fair play at the hands of the police, the investigating agency and the prosecutor, who according to her, are the colleagues of and friendly to the accused persons who are police officers and further that release of respondents 2 and 3 on bail would positively hamper the investigation as well as the whole case as they would be quite free to temper with the witnesses.

(5) There is a D.D. report No I I-A recorded by accused Satish Kadian at 8.05 A.M. on 23-8-1985 according to which the accused persons had raided the house of Gopi (deceased) on receipt of an alleged secret information that smack would be found with him, at unusually odd hours at 5.00 A.M. in the night intervening 22/23rd August 1986. When they reached the house of deceased Gopi the deceased had allegedly escaped but was over-powered by the accused persons and entrusted to the charge of Constable Jagmal Singh accused so that the house could be got opened. But Gopi (deceased) again escaped not to be traced till a message was received at about 11.00 A.M. from Ram Manohar Lohia Hospital regarding the admission of Gopi (deceased) having been brought there as dead.

The dead body had, however, been earlier taken to Khera Nursing Home at about 7.00 A.M. on 23-8-1986 by the police officers. A couple of hours later at 9-00 A.M. the dead body was brought to Ram Manohar Lohia Hospital.

(6) Dr. L.T.Ramani of Police Hospital, in autopsy report found as many as 24 bruises besides multiple bruise;; on the left arm, elbow and left fore-arm and swelling at the back of both the hands which prima facie appear to go along with the version of the first informant Sudesh Kumar regarding the beating to deceased Gopi as against D.D. report No. 11-A already referred. to above.

(7) The question of beating to death Gopi (deceased) and if by the accused persons, is the subject of investigation and trial of this case. Sudesh Kumar nephew of the deceased is the only eye-witness to the alleged occurrence as stated in the first information report lodged by him.

(8) The apprehension of the petitioner who is the wife of the deceased that respondents Satish Kadian and Inder Singh Rana Sub-Inspectors of Police, if allowed to remain free on bail, would temper with the only eye witness of the occurrence, namely, Sudesh Kumar nephew of the deceased, appears to be quite reasonable in view of the circumstances already set out above and especially a very large number of injuries on the person of the deceased and the D.D. report No. 11-A recorded by accused Satish Kadian at 8.05 A.M. on 23-8-1986 according to which the deceased escaped not to be traced till a message was received at about 11.00 A.M. from Ram Manohar Lohia Hospital regarding the admission of the deceased having been brought there as dead by his nephew Sudesh Kumar and the factum of the dead body of the deceased having earlier been taken to Khera Nursing Home at about 7.00 A.M. on 23-8-1986 by the police officers. There appears to be prima facie justification in the threat alleged to have been held out by the accused-police officers to the lone eye-witness Sudesh Kumar to state to the authorities whoever they be, as per their dictates failing which he would meet the same consequence as his maternal uncle Gopi had met with, as also in the further apprehension that thereby they falsely want to destroy the version of Sudesh Kumar made by him in the First Information Report, and to strengthen their own defense that it was Sudesh Kumar who alone had brought the dead

body of the deceased from the park where the deceased was lying dead which does not find favor from the factum of the police officers having themselves taken the dead body of the deceased to Khera Nursing Home prior to its being taken to Ram Manohar Lohia Hospital, and it is not to be forgotten that the accused persons of this case are police officers. The following observations of the Supreme Court in Niranjana Singh and another v. Prabhakar Rajaram Kharote and others : 1980 CriLJ426 appear instructive :-

'GRANT of bail is within the jurisdiction of the Sessions Judge but the court must not, in grave cases, gullibly dismiss the possibility of police-officers intimidating the witnesses with cavalier ease. In our country, intimidation by policemen, when they are themselves accused of offences, is not an unknown phenomenon and the judicial process will carry credibility with the community only if it views impartially and with commonsense the pros and cons, undeterred by the psychic pressure of police presence as indicated.'

The following observations appearing at page 429 in that very authority are also relevant:-

'...It must be remembered that the allegations are that the deceased was dragged out of a truck to a scheduled place, later tied to a tree and shot and killed by the police officers concerned.'

(9) In Gurcharan Singh and others v. State of Delhi (Delhi Admn) : 1978 CriLJ129 the Supreme Court held as follows :-

'THE Sessions Judge did not take into proper account the grave apprehension of the prosecution that there was a likelihood of the accused persons tampering with the prosecution witnesses. In the peculiar nature of the case revealed from the allegations and the position of the accused in relation to the eye-witnesses it was incumbent upon the Sessions Judge to give proper weight to the serious apprehension of the prosecution with regard to tampering with the eye-witnesses, which was urged before him in resisting the application for bail..-'

(10) In *The State through the Delhi Administration v. Sanjay Gandhi* 1978 Cr. L. 952 it was observed as under :-

'...PROVING by the test of balance of probabilities that the accused has abused his liberty or that there is a reasonable apprehension that he will interfere with the course of justice is all that is necessary for the prosecution to do in order to succeed in an application for cancellation of bail.'

(11) In view of the above discussion the bail granted to respondents 2 and 3 Sub-Inspectors Satish Kadian and Inder Singh Rana is cancelled and they be arrested and commit to custody.

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