

Court on Its Own Motion Vs. State (Delhi Administration) Malayalees Welfare Forum Delhi Keralites Forum

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Court : Delhi

Decided On : Mar-15-1993

Reported in : 50(1993)DLT344

Judge : R.L. Gupta, J.

Acts : [Constitution of India](#) - Article 226; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 154

Appeal No. : Criminal Miscellaneous (Main) Appeal Nos. 226 and 309 of 1993

Appellant : Court on Its Own Motion

Respondent : State (Delhi Administration) Malayalees Welfare Forum Delhi Keralites Forum

Advocate for Pet/Ap. : P.S. Sharma,; K.V. Vishwanathan,; Ambika Nair and;

Judgement :

R.L. Gupta, J.

(1) On 27-1-1993 I was shocked to read a news item under the caption, 'Mystery shrouds girl's death' in Hindustan Times. The report stated that a young Keralite lady Bina Thomas was working as a Laboratory Technician in a private Nursing

Home, Okhla which belonged to one Dr. Akbar. She was alleged to have committed suicide and that Okhla Police had tried to 'hush up' the matter. Her sister, Alphonsa thomas was also reported missing for the past few weeks from her Kidwai Nagar house. They hailed from a poor family of Kerala and few years ago had come to Delhi. Alphonsa Thomas worked in a private firm in Kamla Market. In fact, the complete summary of the facts now emerges from a complaint made by her to the Sho, Pp Okhla. In her complaint dated 17-12-92 she requested for registration of a case and investigation with regard to the death of her sister Bina Thomas in suspicious circumstances at the Akbar Nursing Home, 541/5, Nursing House, Jamia Nagar, Okhla on the evening of 16-12-92. She said that on 16-12-92 Bina had left for the Akbar Nusring Home at about 8.00 A.M. She was hale and hearty. Alphonsa Thomas herself left the house at about 8.15 A.M. to The place of her employment in Karala Market. She returned home, by about 6.00 p.m. and she was waiting for the arrival of her sister who normally returned by about 7.00 P.M. When she did not reach by even 7.30 P.M. she telephoned the Akbar Nursing Home from a nearby shop. Dr. Akber came on the line and when she enquired from him about her sister, he informed her that her blood pressure was down and she was resting. He further informed that Bina had vomited also. Then she told the Doctor that. she. and Bina stay together at their Kidwai Nagar house and so requested, him to send her along with a compounder as an escort. Dr. Akbar stated, it will not be possible to send her in three wheeler and that it would be better if she come over to the Nursing Home. She, thereforee, went there along with one Vikram Singh aged about 18 years in a three wheeler scooter. She found a lot of policemen standing inside and outside the Nursing Home. Dr. Akbar was also standing there. The policemen asked her residential address, employment particulars and native place. She requested the police to permit her to see her sister because she was extremely worried about her. All this happened in the presence of Dr. Akbar. Suddenly during the course of that enquiry, one policeman asked her whether she would like to see the dead body of her sister, Bina Thomas. She was taken aback and asked the policeman as to what he was talking. It was about 8.45 P.M. The policeman took her to the opposite room and when he opened the door she could see her sister hanging from a ceiling fan with a white bed sheet tied around her neck and its other end connected to the ceiling

fan. Her one leg was resting on the stretcher kept in the room. The policeman immediately tried to whisk her away. But when she requested him to permit her to see her sister. Dr. Akbar told her at that stage that he will look after the funeral expenses. Thereafter she was taken to the residential portion of the building belonging to Dr. Akbar. She called her brother Jose T. Paul residing in Pts Colony near Mehrauli from the telephone at the residence of Dr. Akbar. A policeman took away the receiver from her hand at that point of time and talked to Jose. When the policeman had finished the conversation, she realised that he had not told Mr. Jose the exact place where he was to come and so she enquired from the policeman about this fact. He said that he had asked him to come to Okhla police station. By then it was 9 or 9-15 P.M. She remained there up to about 12.30 A.M. and during that period, she further says, lot of 'activities were going on in the Nursing Home portion of the building. At about 12.30 A.M., some policemen come again and asked her to accompany them to the police station. She and Vikram prepared to leave for the police station. She boarded the police van while Vikram came with a policeman on his motor cycle. She was made to sit in the front portion of the large van. They alighted from the police van at some distance from the police station which was covered on foot. Again some enquiries were made from her. She saw Madhusudan, who was fiancée of her sister Bina at the police station and he informed that at about 4.00 P.M. he had called Bina over telephone to discuss about the return of Bina from the Nursing Home to her house. Madhusudan used to go to pick up Bina as the situation in Delhi was tense after 6th December, 1992. He also informed her that when he had reached the Nursing Home by about 6.00 P.M., the compounder Iqbal, despite repeated requests, did not take him in the Nursing Home and rather said that Bina was with Dr. Akbar discussing some matters. He further informed her that by about 6.30 P.M., Dr. Akbar himself came out and asked him to sit. Thereafter Dr. Akbar came out with two police constables who asked him his name, other particulars and asked him to accompany to the police station and it was since then that Madhusudan had been sitting in the police station. He further told her that from the discussions that were going on amongst the police officials, he came to know that his fiancée Bina had died.

(2) By then it was about 2.00 A.M. Jose Paul .had. also reached the police station. They were directed to board the police van to go to the All India Institute of Medical Sciences. The dead body of Bina accompanied them in the police van. It was the same van which had dropped them at some distance from the police station. In the end she said in her complaint that Bina was hale and hearty and she was a perfectly normal person. She was shocked to realise that she had died and she seriously suspected that; there had been some foul play. It did not-appear to her that it was a normal death or a suicide. She strongly felt that Bina had been killed and then suspended from the ceiling fan with.the aid of the bed sheet and further that the conduct of Dr. Akbar was highly suspicious. thereforee, she requested the police to investigate the matter.

(3) Since the report in Hindustan Times indicated the death of Bina in suspicious circumstances, I directed issuance of notice to the Commissioner of Police to inform as to what investigation had been done in the matter. The Standing counsel (Criminal) Delhi Administration was also requested to personally assist the court. In the meanwhile two Associations, namely, Malayalees Welfare Forum (MWF) and Delhi Keralite Forum (DKF) also intervened in the matter. They were allowed to address this court. The notice was returnable on. 2-2-1993 and on that date the learned standing counsel filed reply on behalf of Sh, Ram Kishan, Sho of Police Station Siri Niwas Pun. I was on leave on 2-2-1993 and, thereforee, the matter was listed on 3-2-1993. On that dale Mr. Sharma contended that the report of the CFSL seemed to belie the post mortem report. The report of the CFSL indicates that six micro slides having whitish smear, one cotton vaginal wool swab having light brownish strains, two cotton. swabs on two small sticks having dirty stains, (all pertaining to the deceased Bina Thomas) whitish viscous liquid kept in three separate vials and described as semen of Raj Kumar, iqbal Ahmed, Dr.M. J. Akbar, three cotton wool swabs with stains described as blood samples of Raj Kumar, Iqbal and Dr. M. J. Akbar respectively were forwarded to CFSL for analysis. The Chemical examiner of CFSL could not detect semen either in the microslides or vaginal swabs of the deceased. The sample semen of Raj Kumar, Iqbal Ahmed and Dr. Akbar also gave no reaction. It further increased my suspicion that probably the investigation was not being carried on in a fair manner by the local police. So I directed the Commissioner of Police to hand over the

investigation of the case to the Crime Branch. I also directed the local police to file a report in respect of the investigation taken till date.

(4) In fact, the photo copy of the complaint made by Alphonsa to the Sho, Pp Okhla has been appended with the intervention application of Mwf who were allowed to intervene in this matter and address arguments. Thus I have heard arguments advanced by learned counsel for the aforesaid Forum and Mr. P. S. Sharma on behalf of the State. Mr. Francis who appeared on behalf of Dkf has adopted arguments of learned counsel for the other Forum. The newspaper report indicated that the Okhla police was trying to hush up the matter and from the investigation carried out by the local police, therefore, we will have to see whether it is factually correct or not. The complaint of Alphonsa shows that it was given to Sho Okhla police station on 17-12-1992 itself. The occurrence had taken place on 16-12-92 only and from almost 8.30 P.M. to about 2.00 A.M. on the night between 16/17-12-92 she was either in the nursing home or the police station itself. Then she accompanied the dead body of her sister to the hospital and a lot of time must have been consumed in various formalities. So it can almost be safely presumed that poor Alphonsa must have remained awake almost for the whole night between 16th and 17th December, 1992. At page 6 of the affidavit dated 20-2-93, it is admitted by the Sho that the complaint of Alphonsa was received at Police Post Okhla on 17-12-92. In this complaint, Alphonsa clearly mentioned that she suspected some foul play seriously in the death of her sister and that her sister had been killed and then suspended from the ceiling fan with the aid of the bed sheet. She further mentioned that conduct of Dr. Akbar was highly suspicious. I have examined the case diary of the police and English translation thereof under my direction has been handed over to me. In the background of the complaint made by Alphonsa to the Sho, it is not possible for me to understand as to how the police mentioned in the statement of Alphonsa that she had no suspicion regarding the death of her sister and that she had committed suicide. This statement of Alphonsa seems to have been recorded by the police on 16-12-92. In the case diary of 22-3-92, it is mentioned by the police that according to the opinion of the Doctor in the post mortem report, the cause of death is asphyxia resulting from hanging and that findings were suggestive of recent sexual intercourse before death with no ante mortem injury or sign of

struggle. However, there was a ligature mark around the neck. The Investigating Officer further records that he told Alphonsa after going to her house that day that a reply had been sent to senior officers in respect of her complaint dated 17-12-92. As is apparent from the complaint dated 17-12-92 of Alphonsa she had suspected the conduct of Dr. M. J. Akbar regarding the death of her sister and that there was definitely some foul play. It is not possible for me to believe the statement attributed to Alphonsa by the Investigating Officer before him on 22-12-92 that she will give information, if anything came to her knowledge after her return from Kerala after performing last rites of Bina. It is rather strange that in her complaint dated 17-12-92 Alphonsa made definite allegations regarding her suspicion upon Dr. Akbar and the police officer attributing the statement to her that she will supply information, if any, after her return from Kerala. This prima facie clearly indicates that local police had not carried out the investigation in a fair manner and was simply trying to torpedo the investigation.

(5) Then the post mortem report, as reproduced in the case diary itself, indicated recent sexual intercourse before her death. But according to the report of CFSL microslides of whitish smear lifted from the clothes and vagina of the deceased show that the semen was not detected on these exhibits. There was interrogation of Alphonsa after post mortem on 18-12-92. On that date also according to the police she did not suspect any foul play about the suicide of her sister but only wanted to know the reasons, of suicide.

(6) From the above facts, it is clear that the police did not register any case against Dr. Akbar etc. on 17-12-92. the day on which complaint of Alphonsa was received in which she went to the extent of saying that Bina had been killed and then suspended from the ceiling fan with the aid of a bed sheet. It was the legal duty of the police to register a case on that very day, at least against Dr. Akbar who was named in the complaint. It has been ruled by the Supreme Court in the case of State of Haryana and others Vs . Ch. Bhajan Lal and others : 1992 CriLJ527 that,

'At the stage of registration of a crime or a case on the basis of the information disclosing a Cognizable offence in compliance with the mandate of Section 154(1)

of the Code, the concerned police officer cannot embark upon an enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer in charge of a police station is statutorily obliged to register a CUGS and then to proceed with the investigation if he has reason to suspect the commission, of an offence which he is empowered under Section 156 of the Code to investigate, subject to the proviso to Section 157.In Section 154(1) of the Code, the legislature in its collective wisdom, has, carefully, and cautiously used the expression 'information' without qualifying the same as in Section 41(l)(a) or(g) of the Code wherein the expressions, 'reasonable Complaint' and 'credible information' are used. Evidently, the non-qualification of the word 'information' in Section 154(1) unlike in Section 41(1)(a) and (g) of the Code may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, 'reasonableness' or 'credibility' of the said information is not a condition precedent for registration of a caseAn overall reading of all the Codes makes it clear that the condition which is sine qua non for recording a First Information Report is, that there must be an information and that information must disclose a cognizable offence.. . . . It is, therefore, manifestly clear that if any information disclosing cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information.'

(7) So it will be seen that in this case the police has given scant regard to the law laid down by the Apex Court of this country wherein it has been held that Fir should be recorded before proceeding with investigation. In this case neither they recorded the Fir on the day Alphonsa made complaint to them nor investigated the case according to law. Non-registration of the case by the local police gave an initial set back to the discovery of truth during the course of investigation. It rightly infuriated the media and the common man to believe that the police was trying to 'hush up' the case. The earliest report came in Times of India dated 20-12-92 according to which police started saying that it seemed to be a case of suicide

while Youth Congress functionaries claimed it to be surrounded by suspicious circumstances. The matters did not rest there. The death of Bina was followed by suicide of her lover Madhusudan on 22-12-92 and the Hindustan Times report dated 24-2-92 said that the suicide note of Madhusudan mentioned that Bina ended her life after she was sexually assaulted by unknown persons. The functionaries of MwF and DkF were running from pillar to post' with Alphonsa so that a proper investigation could be carried out in the whole sordid affair and culprits brought to book.

(8) The SHO has admitted in his affidavit filed on 20-2-93 that Dr. Akbar had told him that Madhusudan used to come with Bina J Thomas. Raj Kumar, a servant of the Nursing Home 5s also shown in the case diary to have told the police that a telephone call had come from Madhusudan for Bina Thomas at about 4.00 p.m. and also that he used to come to take Bina from the clinic. Thus the 'relationship or the intimacy between Madhusudan and Bina were known to Dr. Akbar as well as his employees but in spite of that when Madhusudan came to the Nursing Home that day, he was not allowed to see the dead body of Bina because in that situation if that fact had come to his knowledge, he would have immediately informed Alphonsa. But he was taken to the police post Okhla by Constable Subhash Chand apparently at the instructions of either the IO or the SHO himself. Another suspicious circumstance is as stated in the complaint of Alphonsa. When at about 7.30 P.M. she rang up in the Nursing Home to find out as to why her sister had not arrived. Dr. Akbar told him that her blood pressure was down and that she was resting and also that she had vomited. At that stage Dr. Akbar did not consider it fit to request her to come immediately. If he was really interested to avoid shock to Alphonsa, at the very first instance he would have told her that her condition was not good and, therefore, she should come to take her. It was only when Alphonsa requested him to send her along with the Compounder that he asked her to come. Even on her reaching the Nursing Home, she found lot of policemen standing inside and outside the Nursing Home as well as Dr. Akbar. Dr. Akbar even then did not inform Alphonsa about the fate of Bina and it was rather the same police official who started interrogating her about her residential address, employment particulars and her native place. She told him that she was extremely worried about her sister and that she should be permitted to see her. Even then

Dr. Akbar did not tell her anything and it was the police officer, during the course of inquiry, who told her if she would like to see the dead body of her sister. Then only she was shown the dead body of Bina hanging from the ceiling fan with white bed sheet tied around her neck and connected to the ceiling fan. When Alphonsa was staring at the dead body of her sister in a State of mental agony, no word of solace came from Dr. Akbar to her and the only thing he is alleged to have stated is that he will bear the funeral expenses. Prima facie in my view, such an utterance simply added insult to the injury which, had been suffered by Alphonsa by the untimely snatching away of her dear sister by the cruel hands of Court on its own motion vs. State (Delhi Administration) 333 Malayalees welfare Forum Delhi Keralitcs Forum fate. The Sho has stated in his affidavit that the inquest proceedings were conducted under his supervision and autographs were taken before removing the dead body from its hanging position. On inspection of the dead body, no external mark of injury was found except ligature mark around the neck. He also did not find any sign of struggle. Her clothes were found intact. According to him all the symptoms of hanging were there. It is not clear to me as to how the Sho came to the conclusion that ail the symptoms of hanging were present. There are two possibilities in such cases. One is that the victim herself did all the acts connected with the banging or some other person did it after killing her. The second possibility was definitely required to be ruled out. No attempt seems to have been made to lift the finger prints from the: bed sheet with which Bina was hanging. If it bore the finger prints of some person other than Bina herself, prima fade the conclusion could be' reached that .somebody else was responsible for her hanging. During the course of investigation the police did not lift any finger prints which prima facie is again an indication of the fact that , investigation in this case was not done in a fair manaer. The police should have made an attempt to find out whether the hanging was suicidal or homicidal. It was only when during post mortem the Doctor reported that the findings were suggestive of recent sexual intercourse before her death, that a case was registered on 22-12-92 by the police under Sections 306/ 376 Indian Penal Code vide Fir 791/92. Alphonsa even in her complaint dated 17-12-92 had suspected that her sister was first killed and then suspended w)th a ceiling fan and she also raised a suspicion on Dr. Akbar and in spite of such serious allegations the local police did not register any case there

and then against Dr. Akbar or any of his employees as has been laid down by the Supreme Court in the case of Ch. BhaJan Lal (supra).

(9) Now it seems rather strange that the Doctor conducting post mortem examination found symptoms of recent sexual inter- course upon the dead body of Bina while the report of CFSL fays that no react'oii was found regarding the presence of semen or ceramic material lifted from the cloth, buttock or thigh of Bina. It is very difficult to reconcile these two facts. Viewed in the background of .the manner in which the investigation hax been carried out in this case by the local police right from day one, I am of (he view that all these facts require a detailed investigation. My prima facie conclusion is that ihe conduct of the local police ?s not. free from blame and the investigation haa not been fair.

(10) A preliminary objection was taken by the Sho in his affidavit that this Court cannot embark upon an inquiry in a case which is pending investigation under the provisions of the Code of Criminal Procedure contained in Sections 154 and 157 and that the field of investigation of a cognizable offence is exclusively within the domain of the Investigating Agency. Reliance has been placed for the aforesaid proposition or the case of State of Bihar and another Vs . P. P. Sharma and another : 1991 CriLJ1438 . My attention has specifically been drawn to the observations of the Hon'ble Court in para 69 at page 179. The question posed in this para is as to whether the High Court, in exercise cf its extraordinary jurisdiction under Article 226 of the Constitution, would interfere and quash the charge sheet. The High Court found that the documents relied upon by the respondent/accused were not denied by the Stalls by filing counter affidavit and so they must be deemed , have been admitted. On the above facts, Prima facie the High Court found that there was no prima facie case made out on merits and chances of ultimate conviction were bleak. Accordingly the Fir was quashed, the Supreme Court observed that the learned Judge of the High Court had committed' gravest error of law in quashing the Fir and charge sheet. I am afraid that in the present case no such question is posed. In fact the question here is quite different and that question is as to whether the High Court, if appraised that the investigation is not being conducted in a fair manner, can interfere with the course of investigation. It has been laid down by Supreme Court in the case of State of

West Bengal and others v. Sompal Lal and others Air Sc 195 :-

'It is sufficient to indicate that there is residuary jurisdiction left in the Court to give directions to the investigation agency when it is satisfied that the requirements of the law are not being complied with and investigation is not being conducted properly or with due haste and promptitude.'

(11) In fact that is exactly my feeling in this case that the local police has not carried out the investigation in a fair manner and with due haste and promptitude. It did not register the case on 17-12-92 immediately on receipt of complaint of Alphonsa. The statement put in the mouth of Alphonsa by the local police that she did not suspect foul play, is prima facie not correct when she is shown to be running from pillar to post to seek justice and clearly spelling out her suspicion. Then the Court on its own motion vs. State (Delhi Administration) Malayalees Welfare Forum Delhi Keralites Forum local police did not make an attempt to lift finger points from the bed sheet which could have shown whether the death was suicidal or homicidal. Then the local police seems to have made up its mind without even registering the case at that time that it was a case of suicide (page 5, 11th line of affidavit of Sho dated 20-2-1993). It has also put wrong statements in the mouth of Alphonsa at a time when she was running from pillar to post for seeking justice. Even at about 6 P.M. when Madhusudan reached the nursing home, the Compounder Iqbal did not let him in despite his repeated requests and rather told him that Bina was discussing some matters with Dr. Akbar. This is so stated by Alphonsa in her complaint. Admittedly, by that time Bina was dead and, therefore, the statement of Iqbal to Madhusudan was painfully false. Officials of the local police were present there at that time and none of them bothered to disclose to Madhusudan that Bina was already dead. He was rather shunted away to the police station. All these circumstances clearly indicate the unfair manner in which the investigation was proceeding and that too without registering a formal FIR.

(12) It is, indeed, unfortunate that such disgraceful crimes against women are committed in a country where the ancient most law giver, Lord Manu raised them to a status of worship). That is why, probably, he ordained that women should be

honoured and adorned with apparel and jewels by their fathers, brothers, husbands etc , if they seek abundant prosperity. He then declared that being endowed with learning, the men of house where women are honoured, are called gods and live in happiness at. home. But the religious acts of the family where women are not honoured, become fruitless, and Further, that that family soon goes to wreck and ruin where women are sad and miserable. That family enjoys perpetual prosperity where women are filled with joy, alacrity and delight. If this concept is applicable to one family unit, it will positively apply to the prosperity of our whole country, because after all what is a country, but the sum total of all such small 'nits. This Court has, thereforee. ample faith that the investigating officer, now entrusted with the investigation, will do his utmost to dig out the truth This will be his humble contribution in steering and shaping she destiny of our great country in an rooer direction. Oh, h"w intensely this Court awaits the awakening of the sole of this country nay the entire world, through the glowing of each individual soul fur the complete banishment of the force of domestic darkness as a meaningful prelude to a Prosperous World, when none will be jealous of his neighbour, rather love his neighbour as thyself in a spirit of universal brotherhood, where men instead of falling, rather rise in love, where the thorns of lust (of which prima foci Bina Thomas seems to be a victim) shall be plucked from the eyes of men, and where our mothers, wives, sitters and daughters will feel fully secure with their sons, husbands, brothers and fathers. I have ample faith in the inner beauty of men and women of this wonderful planet of ours and somehow my heart beckons to the call of an inner voice that the day is not far off when virtue instead of vice will be the guiding polar star of the ship of destiny of the human race of fresh woods and pastures new (John Milton).

(13) But at the end, it may be clarified that it is not the intention of this Court to indict any person at this stage as an accused. All the aforesaid observations have been made because prima facie it appears that the investigation by the local police was not carried out in a fair manner. By an interim order on 3-2-1993, this Court had transferred the investigation to the crime branch. It is my fervent hope that now during investigation an all out attempt will be made to bring the culprits to book. If necessary, the dead body of Bina can also be exhumed for taking the investigation to a logical end. In fact, this suggestion is being given at the instance

of learned counsel for MWF. I also direct that the investigation will be supervised by Dcp (Crimes) either personally or by an officer to be nominated by him, but not below the rank of Additional DCP. The investigation shall be completed within two months.

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