

Sarvesh Kumar Vs. State

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Court : Delhi

Decided On : Sep-20-1990

Reported in : 42(1990)DLT395; II(1990)DMC583; 1990(19)DRJ222

Judge : V.B. Banaal, J.

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

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 1789 of 1990

Appellant : Sarvesh Kumar

Respondent : State

Judgement :

V.B. Bansal, J.

(1) Sarvesh Kumar petitioner has moved this application under Section 439 of the Code of Criminal Procedure for release on bail for the offence under Section 302 Indian Penal Code in Fir 161/90, Police Station Krshan Nagar, Delhi.

(2) Uma, a resident of village Kasganj. Etah (UP) was married to the petitioner on 16th February. 1990. After her marriage she started residing with the petitioner, her husband at Delhi.

(3) During the night between 30th April and 1st May, 1990 Smt Uma received burn injuries at the house of the petitioner She was removed to L.N.J. P. Hospital by her father-in-law Harkishan at 2 20 A.M. of 1st May, 1990. She sustained 85 per cent burns and died in the hospital on 3rd May, 1990. After the registration of the case the petitioner has been arrested and at present is in custody challan has already been filed and the case is pending before the learned Metropolitan Magistrate.

(4) Learned counsel for the petitioner has submitted that it is an unfortunate case in which Smt. Uma sustained accidentally burn injuries resulting in her death and that the petitioner is not in anyway responsible for her burn injuries He has also submitted that there has not been allegation of demand of dowry and that there have been contradictory statements by the deceased before the doctor police officer and the SDM. He has also submitted that the petitioner would be ready and willing to abide by such conditions as may be deemed proper to be put for the release of the petitioner. A prayer has, thus, be made for the release of Sarvesh Kumar.

(5) This application has strongly been Counsel. opposed by learned Standing

(6) I have given my thoughtful consideration to all these submission and have examined the records.

(7) Submission of learned counsel for the petitioner has been that the deceased made a first dying declaration to the doctor which forms part of the Mlc clearly indicate that the petitioner was not in any way connected with the receipt of burn injuries by Smt. Uma A perusal of the Mlc shows that the informant was Harkishan, father-in-law of Smt. Uma who had given the alleged history of burns by stove It would, thus. be clear from this documentary evidence itself that the said information was not given by Smt. Uma and it had not been the case of the prosecution at any stage that the injuries were received by Uma by Stove.

(8) Learned counsel for the petitioner has submitted that after Smt. Uma was declared to be fit for statement by the doctor at 3.30 A.M, of 1st May, 1990 her statement was recorded by the police officer in which she had made a categorical statement that she was putting kerosene oil in a lamp when it fell on the floor and

also on her saree and when she was lighting the lamp her saree caught fire and she, thus, sustained injuries accidentally. He has, thus, submitted that in view of this statement of the deceased there could possibly be no question of denial of bail to the petitioner. According to the prosecution story Uma was unfit, for statement at 9.15 A.M. of 1st May, 1990 and at 9.45 A.M. of 2nd May, 1990. Her statement was recorded by Sdm at 11.15 P.M. of 2nd May, 1990 after she was, declared by the doctor to be fit for statement at 11.00 P.M. Learned counsel for the petitioner had referred to a photo copy of Mlc supplied to the accused relating to Smt. Uma on which there is no endorsement to indicate that the patient was fit for statement. However, to ascertain the facts the original file was summoned and a fact the aforesaid entry about the fitness of Smt. Uma was found to be existence on the original Mlc In this statement it has categorically been stated by the deceased that kerosene oil was put on her by her husband and she was set on fire. There is no doubt that there has not been any demand of dowry by the petitioner but there is a specific dying declaration by the deceased who has died in about 2 1/2 months of her marriage at the house of her husband with 85 per cent burns. It may also be noted that Asi Yad Ram who recorded the statement of Smt. Uma on 1st May, 1990 had not obtained her signatures or thumb impression on the plea that both her hands had burn injuries. However, the dying declaration of Uma recorded by the Sdm on 2nd May, 1990 bears her thumb impressions. A perusal of the postmortem examination report shows that there were burn injuries on both the upper limbs including the back of her hands. This would certainly corroborate the claim of the Sdm about having obtained the thumb impressions of the deceased.

(9) Learned counsel for the petitioner has also submitted that according to the prosecution there was another dying declaration by the deceased to the doctor that her husband stuffed cloth into her mouth and poured kerosene oil over, her and lighted her. He has, thus, admitted that this dying declaration is at variance with the one recorded by the SDM. It is pertinent to note that she has claimed that she was set on fire by her husband and the detailed facts would be gone into by the trial court. However, considering all the facts and circumstances, I am clearly of the view that no case is made out for bail.

(10) As a result the petition stands dismissed.

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