

**Sudesh Kumari Vs. State**

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**Court :** Delhi

**Decided On :** Aug-21-1991

**Reported in :** 46(1992)DLT95

**Judge :** R.L. Gupta, J.

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

**Appeal No. :** Criminal Miscellaneous (Main) Appeal No. 658 of 1991

**Appellant :** Sudesh Kumari

**Respondent :** State

**Advocate for Pet/Ap. :** K.K. Sud,; S.P. Ahluwalia,; Superabha,;

**Judgement :**

**R.L. Gupta, J.**

(1) Petitioner has moved this application for grant of bail. She is facing trial in a case under Sections 302/201/120B/34 Indian Penal Code in Fir No. 274/90 of police station Badarpur along with her husband Sukhbir Chand one Subhash.

(2) I have heard arguments advanced by Mr. K.K Sud, Advocate for the petitioner, Sh. A.P. Ahluwalia, Advocate for the complainant and Sh. S.K. Aggarwal, Advocate for the State.

(3) The brief facts emerging in this case are that on 17.9.1990 at about 10.50 P.M. one Ram Lal, father of the deceased Krishan Kumar lodged Dd report No. 16-A with police station Badarpur that the deceased aged about 30 years had gone to Central Bank of India, Badarpur at about 11.30 A.M. for depositing some amount and had not returned and was not available in 96 spite of efforts. On 20.9.90 at about 1.40 A.M., Shobha wife of the deceased came to the police station and lodged an Fir that on 17.9.90 at about 11.30 A.M. her husband had taken Rs. 20,000.00 for deposit in Central Bank of India, Badarpur and that he did not come back She made some enquiries where from she came to know that co-accused Subhash had taken her husband on his scooter and at that time a third person was also sitting on the scooter. She also reported that some amount was due to the deceased from Subhash co-accused which was not repaid in spite of demand by the deceased.

(4) On interrogation of Subhash, the petitioner and her husband Sukhbir Chand were arrested Their disclosure statements were recorded. A bunch of keys belonging to the deceased and identified as such by his wife was also recovered from petitioner while a key, apparently of the lock affixed on Flat No. 339-A, Sarita Vihar, Janta flats was recovered from the co-accused Sukhbir Chand. After the alleged disclosure statements, aforesaid flat was pointed out by them. It was opened with the key recovered from Sukhbir Chand, co-accused. Dead body of Krishan Kumar was recovered from the flat. In the post mortem report the cause of death is stated to be strangulation.

(5) Learned Counsel for the petitioner has submitted that the main co-accused Subhash has already been admitted to bail by this Court. In fact he was the main person behind the alleged offence and he being released on bail, the petitioner was also entitled to be released on bail. Besides that he has drawn my attention to the statements of various witnesses recorded by the police. His submission is that the statements were recorded very late i.e. on October, 1990 and obviously they appear to be procured witnesses. Regarding flat No. 339-A, Sarita Vihar, it is also argued that the presence of the dead body was already known to the police and therefore, the subsequent recovery by the police on the alleged disclosure statements of the petitioner and others had no value.

(6) On the other hand on behalf of the State the arguments have been refuted.

(7) I have given my careful consideration to the rival contentions. So far as the release of the co-accused Subhash on bail by this Court is concerned, I think that will have no relevancy at this stage. If such an argument is accepted, then the petitioner and her husband having not found mention at all in the Fir would be entitled to be released on bail immediately. It is only during the course of investigation that certain pieces of evidence have been found against the petitioner. Those evidence are material and cannot be ignored. For instance, so far as the alleged knowledge of the police regarding the presence of the dead body in the flat in question is concerned, I think it has no adverse effect in this case at this stage. Prior to arrival of the petitioner and other accused persons, the information was allegedly received by the police Control room van and one of the police officials had just peeped into the flat and seen a dead body lying there. The said official i.e. Si Dinesh Singh is alleged not even to be certain at that time if it was a male or female person. Prima-facie, discovery/recovery has to be complete before it can have any adverse effect on the subsequent recovery of the dead body, known by its complete particulars. That it was the dead body of Krishan was known only when the flat was opened with the key provided by Sukhbir Chand, co-accused and the dead body identified. A saree stained with human blood of group-A allegedly belonging to the petitioner was also recovered from the flat. A bunch of keys identified by his wife Shobha as belonging to the deceased has also been recovered from the petitioner. Besides that, are the statements during investigation recorded by the police of some witnesses. For instance Baldev Raj was approached by Subhash and the petitioner for hiring his flat for some of their relations coming from Punjab. Baldev Raj got the impression that they were husband and wife. The petitioner gave substantial part of the monthly rent amounting to Rs. 550.00 on 26.8.90 to Baldev Raj and balance of Rs. 50.00 on 17.9.90, when she further told him that in case their relation did not come from Punjab, they will vacate the flat on 23.9.90. Uday Bhan during investigation also told the police that he had seen the petitioner Along with co-accused on the corner of the flat in a purple coloured saree on the alleged date of the occurrence. It is a saree of that colour only which has been recovered from the flat with blood stains and identified by the witness.

(8) So far as the late recording of the statements of witnesses is concerned. it has been brought to my notice on behalf of the prosecution that local police was not taking the desired interest in the investigation and that is why the investigation had to be transferred to the special staff, South district on 3.10.90 only. It was on 6.10.90 that the statement of Uday Bhan was recorded Besides the aforesaid evidence.prosecution has also collected a diary of the deceased from his father in which there are entries showing that the husband of the petitioner as well as Subhash owed certain amounts to the deceased.

(9) Considering the totality of evidence collected by the prosecution, I am of the view that there are prima-facie strong reasons to suspect the complicity of the petitioner in this heinous murder. Any observations made herein, however, will have no bearing on the merits of the case during trial. The application is dismissed.

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