

Mohammed Zamil Vs. State

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Court : Delhi

Decided On : Feb-21-1994

Reported in : 1994(28)DRJ642

Judge : V.B. Bansal, J.

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

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 2067 of 1993 and Criminal Miscellaneous Appeal No. 2684 of

Appellant : Mohammed Zamil;mohammed Aslam

Respondent : State;state

Advocate for Pet/Ap. : K.K. Sud,; Rakesh Sherawat,; Gautam Kapur,;

Judgement :

V.B. Bansal, J.

(1) By this order, I will dispose of Criminal Misc. (Main) No. 2067 of 1993 (Mohammed Zamil versus State) and Criminal MisG.(Main)No.2684of 1993 (Mohammed Aslam versus State) since they arise out of the same incident in P.I.R. No. 141/92 under Section 498A, 406 and 304B Ipc, police station Lahori Gate, Delhi.

(2) Mohammed Zamil is the son of Mohammed Aslam. Mohammed Zamil was married with Mehnaz Begum according to Nikah ceremonies on 4.11.1989 at Delhi and she thereafter, was residing with her-in-laws.

(3) On 1.5.1992.D.D.No. 19A was recorded at Police Station Lahori Gate at 3.35a.m.. on the basis of information from Police Control Room about giving of information by someone from public call office that one woman has set herself on Fire in House No. 999, Haveli Hizamuddin.Balli Maran, Delhi. Copy of this D.D. entry was given to S.I. Om Prakash, who, along with Const. Brij Vir Singh went to the spot.

(4) S.I. Om Prakash reached the spot and came to know that the injured had already been taken to Jpn Hospital by the P.C.R. van. Accordingly Si Om Prakash left Const. Brij Vir Singh at the spot and reached Jpn Hospital and collected the Mlc of Mehnaz Begum, wife of Mohammed Zamil. She was declared by the doctor, to be unfit for statement. S.D.M. was called after she was declared to be fit for statement. Statement of Mehnaz was recorded at 12 noon. It was, inter-alia. stated by Smt. Mehnaz that on that day, i.e. on 1.5.1992, she poured kerosene oil on her and thereafter, set herself on fire. She claimed that she was harassed by her husband, father-in-law and mother-in-law who used to complaint that she did not bring anything in the dowry and whatever was given, was not good. It was also claimed that a few days earlier, her son had died and for that also, she was being accused. She went on to state that the whole of previous night, her husband was saying so many unwarranted things to her on account of the death of the child and asked her as to why she does not die and it was on this account, that she set herself on fire. She also explained that her husband was present and after she had set herself on fire. her parents-in-law and sister of her husband also came and that she herself extinguished the fire. This statement was sent to Police Station, on the basis of which, case was registered. Mehnaz died on 4.5.1992.

(5) I have heard Shri K.K.Sud, learned counsel for the petitioners and Shri B.T. Singh, learned counsel for the State in Cr.M.(M) 2067/93 and Shri Raman Sahney, learned counsel for the State in Cr.M.(M) 2684/93 and have also gone through the record.

(6) Learned -counsel for the petitioners; has submitted that the petitioners have falsely been implicated in this case by investigating agency in collusion with the parents of the deceased. He has also submitted that there has been, in fact, no demand of dowry at any time and son of Mohammed Zamil and Mehnaz Begum died on 27.4.1992 and she was very much depressed on this account. He has also submitted that it was an accidental Fire caught by Mehnaz Begum when she was preparing tea in the kitchen and that her husband Mohammed Zamil had helped her in extinguishing the fire on account of which. he had in fact sustained burn injuries. It has also been submitted that the investigating agency has with-held the dying declaration of Mehnaz Begum, which was recorded by Si Om Prakash after reaching the hospital and in her statement, before the Medical Officer at the time she was taken by the Police Control Room van, she had made a categorical statement about having sustained injuries while preparing tea in the kitchen. A prayer has. in these circumstances, been made for release of the petitioners on bail.

(7) Learned counsel for the State has, on the other hand, submitted that there are clear averments against the petitioners with regard to the demand of dowry and giving harassment to Smt. Mehnaz Begum by the petitioners and it was on this account that there has been an unnatural death. The petitioners have committed offence of dowry death. A prayer has, therefore, been made that the bail applications be dismissed.

(8) Admittedly, the deceased was taken to LNJP Hospital by Asi Ranbir Singh of Police Control Room when none of her relations, either from the side of husband or from the side of the parents, was present. A perusal of the Mlc, prepared by the doctor indicates that Mehnaz Begum was conscious, co-operative, well oriented in time. place and person. She herself gave information to the doctor about having received burn injuries accidentally while her Dupatta caught Fire from the gas, on which, she was making tea. It has also been noticed that after reaching the hospital, Si Om Prakash had moved an application to the doctor for permission to take statement of the injured on which. Dr. Naresh Kaisi had made an endorsement at 5.15 a.m. on 1.5.1992 that the patient was fit for statement. There is another application, moved by SI Rajiv to the Medical Officer on which, the

patient was declared fit for statement by Dr. Ajay Gandotra at 11.45a.m.on 1.5.1992. Sdm recorded the statement of Mehnaz Begum at 12.00 noon after she was declared fit for statement by the doctor. Submission of the learned counsel for the petitioners has been that the investigating officer had, infact, recorded the statement of MehnazBegumafter5.15 a.m., which has been suppressed, clearly giving indication that it was against the case of the prosecution. Learned counsel for the State has, however, denied about the recording of any such statement and claimed that the 1.0. only made enquiry about the name from the injured, but had not recorded her statement. Reference has, however. been made to the writings in the First case diary by the learned counsel for the petitioners, that it has specifically been mentioned in it that the 1.0. had taken the statement of the injured. It is not the stage for me to comment upon the correctness of this thing and it will have to be gone into during trial. It has also been noticed that the Sdm while recording the statement of Mehnaz Begum, has not recorded the endorsement as required, while recording the dying declaration that he had explained to the patient that he was a Magistrate and was recording her statement. It is also pertinent to note that the statement of Mehnaz Begum is neither signed nor thumb marked by her. Counsel for the Stale submits that the absence of the signatures or thumb impression could be only on account of the presence of burns on both the hands, which is controverter by the learned counsel for the petitioners on Ok basis of Mlc and the post-mortem examination report. This fact again would have to he gone into during trial. It is not the stage for me to express any positive opinion in favor or against the accused. However, considering the totality of the circumstances. I am of the view that it is a Fit case for grant of bail to the petitioners.

(9) As a result. Mohammed Zamil, petitioner in Cr.M.(M) 2067/93 and Mohammed Aslam, petitioner in Cr.M.(M) 2684/93 are ordered to be released on bail, subject to their furnishing personal bond in the sum of Rs.10,000.00 each with two sureties in the like amount each, to the satisfaction of the concerned court.