

O.P. Malhotra Vs. State and ors.

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Court : Delhi

Decided On : Aug-01-1996

Reported in : 1996IIIAD(Delhi)910; 63(1996)DLT716

Judge : S.K. Mahajan, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Writ Appeal No. 117 of 1996

Appellant : O.P. Malhotra

Respondent : State and ors.

Advocate for Pet/Ap. : D.C. Mathur,; Rubecca Jain and; S.K. Aggarwal, Advs

Judgement :

S.K. Mahajan, J.

(1) Being dissatisfied with the investigation carried on by the Delhi Police in Case Fir No. 127/95 dated 26th April, 1995 registered at Ps Kotla Mubarak pur, New Delhi under Sections 302/ 120B/IPC, the petitioner has filed this petition for transfer of investigation to the Central Bureau of Investigation or any other independent agency.

(2) One Praveen Malhotra was the son of the petitioner and was residing on the first floor of House No. A-III, defense Colony, New Delhi. The petitioner and his wife i.e. the parents of Praveen Malhotra were residing on the ground floor of the same house. In the night intervening 19/20th December, 1994 Praveen Malhotra was found dead in suspicious circumstances in room No. 2 of South Delhi Guest House, NDSE-I, New Delhi. The petitioner made a complaint to D.C.P.(South) on 20th December, 1994 stating inter alia that he suspected foul play in the death of his son at the hands of certain persons whose names had been mentioned in the petition. Certain instances of the said persons having got blank papers signed from Praveen Malhotra and having tried to grab the properties have also been given in the petition. On the complaint of the petitioner and after some investigation which was entrusted to Special Investigation Unit, South District and on receipt of the post mortem report, a case under Sections 302/102-B Indian Penal Code was registered at Ps Kotla Mubarakpur, New Delhi. However, after obtaining a second opinion on the postmortem report, it was stated that in view of the investigations carried out so far, it appeared to be a case of accidental death due to the head of the deceased having impacted in the plastic dustbin which resulted into asphyxia. It was further stated that the matter was still under investigation.

(3) Being dissatisfied with the investigation carried out by the police, this petition was filed for transfer of investigation of the case to Central Bureau of Investigation or to any other independent agency. Some of the facts which are relevant for purposes of deciding this petition and which are admitted by the State are:

(4) That on 19th December, 1994 at about 8.30 p.m. a driver came at the guest house in a red Maruti Gypsy and told the man at the reception that the room of Praveen Malhotra had not been cleaned. At this, the receptionist told him that the room had been cleaned 2-3 times in the day. Further, the driver told him that he was coming from the room and Praveen Malhotra appeared to have fallen down; there appeared to be some injury in his mouth and blood was coming out of his mouth to the floor of the room and the receptionist should have the same cleaned. 10 or 15 minutes thereafter the receptionist went into the room of Praveen Malhotra and found his head leaning out of the bed and his left hand was totally

smearred with blood and he was trying to clean the blood from his mouth with the right hand. The receptionist asked him as to what had happened on which Praveen Malhotra tried to speak but failed in his efforts. The receptionist came back at the reception and telephoned the driver to inform him that the condition of Praveen Malhotra was very bad. After about 7-8 minutes, the driver reached the Guest House and the receptionist along with the driver went to the room of Praveen Malhotra where they cleaned his mouth with a towel. After opening the mouth, the driver told the receptionist that it appeared that the tongue of Praveen Malhotra had been cut as a result of which the blood was coming out. When the driver wanted to take Praveen Malhotra to Golf Links to the Doctor, he was told by Praveen Malhotra that he was all right and he wanted a peg of whisky to be given to him. A bottle of whisky was lying in the room and the driver made a peg from out of that and the receptionist came back at the reception. After about 20-25 minutes, the driver came at the reception where he told the waiter Anand Singh to take care of Praveen Malhotra. At about 10.30/10.45 p.m. some lady telephoned at the guest house and asked the receptionist to call the person from room No. 2 where Praveen Malhotra was staying. However, nobody responded to the phone in room No. 2 whereupon the lady asked him to go to the room and find out as to why nobody was responding. When the receptionist went in the room he found that Mr.Malhotra was vomiting blood. The receptionist immediately informed that lady on the phone about the same. After about 8-10 minutes, the driver came at the guest house and he was taken to the room and they found that Praveen Malhotra was already dead and while the lower portion of the body was on the bed, the upper portion was leaning from the bed and his head was in the plastic dustbin. One more person had come along with the driver but he continued sitting in the car and the receptionist, therefore, could not see his face. The driver left the guest house after informing the receptionist that he will be coming back shortly. However, he did not come back. Thereafter, the receptionist telephoned at the same number where he had spoken to the driver earlier and informed the person who had picked up the receiver about Praveen Malhotra. As nobody came at the guest house in spite of the information having been given on telephone, nor the driver came back, police was called at the guest house and was informed about the incident.

(5) The contention of Mr. Mathur, Sr. Advocate appearing on behalf of the petitioner, is that the police has not investigated the case properly. He has drawn my attention to the post-mortem report which shows that the deceased had abraded bruise of irregular shape of 1.5 cm x 1 cm at the centre of forehead and extravasation of blood in an area of 3 cm x 4 cm in the scalp layer underneath this; an abraded bruise at the top of nose of 2 cm x 3/4 cm with swollen nose and underneath fracture of nasal septum; bruise of 1 and 1/2 cm x 3/4 cm over mucosal surface of upper lip, all contusions red in colour. After noticing the injuries and other factors which were before him, the opinion of the doctor conducting the post-mortem was that injury on forehead, nose and lips could not have been caused by impact of pliable plastic material as shown or suggested by the 1.0. Dustbin was insufficient to close or seal all the external respiratory orifices firmly and completely of an adult male; there was clotted dried blood over the nostrils and left side face which was indicative of left lateral position at the time of death or afterwards, so the passive weight of head could not have contributed or resulted in the closure of external air passages (Nostrils and Mouth) and all the above symptoms suggested that it was highly improbable that accidental asphyxia (accidental smothering) would have resulted by blockage or closure of respiratory air passage by the plastic dustbin. Keeping in view the injury on the knuckle of middle right finger which could be a struggle mark and absence of other evident marks of struggle in this case could not possibly be explained by the facial injuries inflicted being sudden and unexpected and the possibility of more than one person could not be ruled out. It was, therefore, opined that there was nothing to suggest from the post-mortem findings and circumstances of the case as to the death being suicidal, accidental or natural in nature. Relying upon this report of the post-mortem and the opinion of the doctor, the contention of the petitioner is that it was a homicidal death and the police was trying to make it a case of accidental death. It is also the contention of the petitioner that there was no occasion for the police to obtain a second opinion on the post-mortem report and the opinion had been taken only to cover up the deficiency in investigation by the police.

(6) About the second post-mortem report which had been obtained by the police, the case of the State is that as the statement of witnesses did not tally, a request was made for constitution of a Medical Board for giving opinion on the postmortem

report. The Board so constituted on 4th July, 1995 has given its report on 12th December, 1995 and therein it has been opined that the death in this case has occurred due to asphyxia consequent upon smothering (closure of mouth and nostrils). Death could also occur either by the occluding substance pressing down upon the facial orifices or by the passive weight of the head pressing the nose and mouth into the occlusion. It was, therefore, extremely difficult to prove homicide from objective finding.

(7) On a perusal of the material before me, I find that certain aspects of the matter appear to have not been investigated by the police inasmuch as while the receptionist at the guest house states that the driver when he came at about 11.00 p.m., was taken to the room of Praveen Malhotra and he was found already dead, the driver left the guest house immediately thereafter to come back shortly, however, he did not come back. Thereafter the information of the death was also given on telephone number available with the guest house from where a lady had earlier telephoned to enquire about the deceased, however, nobody came at the guest house. As to why the driver did not return and why did he leave immediately for Allahabad is a matter which requires investigation. Even a matter of urgent nature could wait the departure of the driver to Allahabad when he had already seen the dead body of the person to whom he was attending upon daily and to whom he had spoken only two hours earlier. The persons who had booked the room for Praveen Malhotra in the guest house having been informed about the death at about 11.00 p.m. did not bother to visit the guest house and it appears that the police had not investigated that angle. Though it has been stated by the driver that the deceased before his death was drinking alcohol, the post-mortem report suggests that there was nothing to 'suggest intoxication or influence of alcohol/phenytoin /any other common poisons'. There is nothing in the report to show as to why the deceased was vomiting blood as there was a pool of blood on the floor.

(8) Be that as it may, on a cumulative reading of the statements recorded by the police and the material placed before me, I feel that the investigation so far carried out was not satisfactory and certain vital aspects of the case have not been investigated. I, therefore, feel that the matter requires further investigation by an

independent agency. Mr. Aggarwal has no objection if the matter is transferred to the Crime Branch, Delhi Police for further investigation.

(9) For the foregoing, I transfer investigation of the case to the Crime Branch, Delhi Police which will carry out further investigation without in any manner being influenced by the investigation carried out earlier. With these observations, the petition stands disposed of.

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