

Virendra Singh Vs. State

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Court : Delhi

Decided On : May-07-2013

Judge : R.V. Easwar

Appellant : Virendra Singh

Respondent : State

Advocate for Def. : Ms. Jasbir Kaur

Advocate for Pet/Ap. : Mr. R. S. Chaudhary

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:2nd May, 2013
Date of Decision:7th May, 2013 % + BAIL APPLN. 712/2013 VIRENDRA SINGH
Through: Petitioner Mr. R. S. Chaudhary, Advocate. versus STATE Through:
..... Respondent Ms Jasbir Kaur, APP for State. CORAM: MR. JUSTICE R.V.
EASWAR JUDGMENT R.V. EASWAR, J.: This is an application under section 439
of the Cr.P.C. for grant of bail in respect of FIR No.813/2011 under section 302/
201/ 120B/ 34 of the IPC registered at P.S. Shakarpur.

2. The brief facts giving rise to the filing of the present application are these, according to the prosecution. At about 3:45 a.m. on 26.09.2011, a call was received by the PCR. The caller who was a woman stated that she was calling from Quarter No.112, Police Colony, Shakarpur and that her in-laws and Mera Aadmi were threatening to kill her. It appears that in a time-span of a minute or so

there were five calls, since the calls were getting disconnected, but the message conveyed was the same. The last call was around 3:45 a.m. Information was accordingly passed on to the nearest PCR van. A constable from the PCR van went to the quarter to inquire. According to the statement of the constable, an elderly woman came out and told him that no such call was made from that quarters. Information about the call in the usual course was passed on to the police station concerned from where also a police constable went to Quarter No.112, Police Colony, Shakarpur. He, however, found the door locked.

3. The aforesaid events took place in the early hours of 26.09.2011.

4. On 15.10.2011 a news item appeared in Nav Bharat Times reporting that a woman residing in Quarter No.112, Police Colony, Shakarpur had died in mysterious circumstances, that she was apparently murdered on 26.09.2011 and that her body had also been cremated hurriedly with intention to destroy evidence. On the basis of the newspaper report, a case was registered and investigation was carried out. The father of the deceased gave a statement under section 161 of the Cr.P.C. in which he said that his daughter, who was married to the accused herein, had been complaining of ill-treatment by her husband and in-laws and that she was not keeping well for quite some time, that he, therefore, went to see her in the evening on 25.09.2011, that after seeing her he came back to his house in the village, that in the early morning of 26.09.2011 at about 5:30 a.m. to 6:00 a.m. he received information that his daughter was no more, that he, therefore, proceeded to the village where the cremation was to take place, that when he reached there he found nishaan on the naak and gala of his daughter, that when he inquired about it the village people who had assembled there consoled him saying that whatever has happened cannot be rectified and that he should forget it and thereafter the cremation was done. A police party did come to the cremation spot but before they could come, the cremation had taken place. The brother of the deceased had also given a statement under section 161 Cr.P.C. narrating the aforesaid events though in his statement there appears to be no mention about his having noticed any injury on the body of his sister.

5. In the course of the investigation by the police it transpired that on 27.09.2011, the accused Virendra, who is a police constable, had called Pankaj, the Sub-Inspector, over phone and informed him that since his Patni bahut bimar hai he wanted 10 days leave. Further, one Pinki Chauhan, constable, who was in the PCR when the calls were received, stated that she could identify the callers voice as belonging to the deceased who was also a police constable and had worked with Pinki Chauhan. The Sarpanch of the village where the cremation took place also made a statement that the body of the deceased was cremated in his presence. The accused Virendra Singh was thereafter arrested and charged under section 302/ 201/ 120B/ 34 of the IPC. The trial proceeded and several witnesses were examined. The father and brother of the deceased, who had earlier given statements under section 161 Cr.P.C., turned hostile during the trial. They made statements dated 02.12.2011 before the Deputy Commissioner of Police (East District), Shalimar Bagh, Bholanath Nagar, Shahdara saying that the deceased was happily married and did not have any problem with her in-laws who had arranged for her medical treatment for heart and lung disease and that they had attended the cremation at village Sunehra.

6. The accused Virendra moved bail application before the Additional Sessions Judge (East), FTC, Karkardooma, Delhi, which was rejected by order dated 10.10.2012. A bail application was moved by the accused Virendra in Bail Application No.854/2012 before this Court which was dismissed as withdrawn by order dated 18.07.2012. Thereafter the present bail application has been filed.

7. The contention of the counsel for the applicant is that the mother of the accused and the brother Narender have already been granted bail. He filed a copy of the order dated 28.12.2011 passed by the Additional Sessions Judge granting bail to Narender and submitted that for the same reasons the present accused should also be granted bail. He contended that the accused was taking very good care of his wife. Both the accused and his wife were police constables. They have two children. Unfortunately the deceased Santosh had developed illness of the heart and lungs for which she was treated in the Government Hospital and evidence in this regard was already submitted. According to the counsel for the applicant, the prolonged illness might have caused mental problems also and despite the

treatment, the deceased was so frail that she might have collapsed at any time. She was on long leave from the duty. It was pointed out that neither the father nor the brother of Santosh had complained of any ill-treatment of Santosh by her in-laws and, therefore, the theory of Santosh having died because of ill-treatment/torture inflicted upon her by her in-laws was too remote to be accepted. It was further pointed out that all the witnesses were only police witnesses and there was no eye witness or public witness. The entire case, according to the counsel for the applicant, was based on circumstantial evidence of doubtful veracity which entitled the applicant to bail. As regards the conspiracy theory, there was no evidence to show meeting of minds.

7. Strongly opposing the bail application, the learned Additional Public Prosecutor, after narrating the sequence of incidents which took place from the evening of 26.09.2011 till the cremation of the body of Santosh, submitted that though the statements made by the father and brother of Santosh under section 161 of the Cr.P.C. were sought to be retracted by them during the trial, those statements cannot be ignored for the purposes of granting bail. She pointed out that the statement of Constable Pinki Chauhan, identifying the voice of the caller as that of the deceased Santosh cannot be brushed aside because both have worked together and she was, therefore, familiar with the voice of Santosh. It was further pointed out that the accused Virendra had called Pankaj, SI, on 27.09.2011, one day after the cremation had taken place to say that his wife was very ill and, therefore, he wanted 10 days leave. According to the learned Additional Public Prosecutor, this clearly indicated a culpable conduct of the accused, for, there was no reason as to why he should utter a lie that his wife was seriously ill, when she had died on 26.09.2011 and her body had even been cremated on that date. Apart from this, there was also the statement of the father under section 161 Cr.P.C. that there were nishaan on the naak and gala of Santosh which he had noticed when the body had been laid for cremation. He has further stated that the residents of the village had told him to forget about it and that it was too late for him to do anything; that there were two children left behind by Santosh for being taken care of and that it would be useless to raise any issue taking into consideration the interest and welfare of the children. It was also argued that the unseemly haste with which the body of Santosh was cremated, particularly in the context of the

statement of her father that he saw injury marks on the nose and neck of Santosh which has not been explained, points to the guilt of the accused Virendra, the husband of the deceased. There was, according to the learned Additional Public Prosecutor, a strong probability that the accused may flee from justice particularly when the trial is coming towards a close. It was thus contended by her that the bail should not be granted. I have carefully considered the rival submissions and the material to which my attention has been drawn. It is true that it is a case of circumstantial evidence. However, there are several features of the case, as pointed out by the learned Additional Public Prosecutor, which prima facie appear to go against the accused for the purposes of the present application. The father of Santosh in his statement under section 161 Cr.P.C., has stated that he noticed injury marks on the nose and neck of Santosh when the body was laid for cremation. The villagers had told him not to raise any issue about it as it was not only useless at that point of time but was also not in the best interest of the children. Though later he had tried to resile from the above statement, some weight has to be attached at this stage to the statement made under section 161 Cr.P.C. because that is the earliest statement given, as soon as the death had taken place. The most important feature is the calls made by Santosh to the PCR, the last of which was at around 3:45 a.m. on 26.09.2011. In a duration of one minute, 5 calls appear to have been made because the line was getting disconnected frequently. Bail.Appln. No.712/2013 identified by Pinki Chauhan, a constable, who stated that she had worked with Santosh and was, therefore, able to identify the voice. In the course of the calls, Santosh had repeatedly stated that her in-laws and her husband (Mera Aadmi) were threatening/ trying to kill her. When the constable from the nearest PCR van had made inquiries in the quarters, the mother-in-law of Santosh had opened the door and stated that no call made to the PCR from that place. The calls were made from the mobile phone belonging to the deceased. The deceased was at that time only in the house because her body had been taken for cremation only from that house, in the Alto car belonging to Narender. It is nobody's case that Santosh was not in the quarters at that time. These calls are, therefore, very important, but still the mother-in-law stated that no call had been made from the house. The message given by Santosh to the PCR was also serious in nature as normally no woman would seek to make such

serious charges against her husband unless there was some real danger or threat to her life. When the constable from the police station concerned later went to the house, he found it locked. The accused and the deceased were staying in a police colony and if Santosh had died a natural death, it seems unlikely that even the neighbours who are all police personnel only would not have been informed of the death and that the body would have been taken to the village for cremation in great hurry.

8. The reliance placed by the counsel for the applicant on the bail order dated 28.12.2011 in the case of Narender is not apposite. Narender, who is the brother of the accused Virendra was charged with the offence under section 201 of the IPC (causing disappearance of the evidence). He was not charged with murder under section 302 of the IPC. This is stated in the bail order itself. His role was limited to taking the body of Santosh in his car from the quarter to the village for cremation and thus causing disappearance of the body which is the corpus delicti. Similarly, the fact that the mother of the accused got bail is also not relevant. The bail order in the case of the mother of the accused was not produced before me and, therefore, it is not possible for me to examine the reasons for granting bail to her.

9. The fact that the evidence is purely circumstantial does not automatically entitle the accused to bail. The entire episode has taken place within the four walls i.e. Quarter No.112, Police Colony, Shakarpur. The residents of the quarters are the accused Virendra, his wife Santosh (deceased), their children, the mother and brother of the accused. The emergency calls have been made from the mobile number belonging to the deceased. She has stated in the calls that her in-laws and husband are threatening or attempting to kill her. The calls are denied by the mother-in-law of the accused. The house is thereafter found locked. The dead body is taken in a hurry to the village for cremation. The father of the accused, who obviously did not see any injury marks on Santosh the previous evening, saw injury marks on the nose and neck of Santosh when her body was laid for cremation. The accused calls his superior officer in the police department on 27.09.2011 and requests for 10 days leave on the ground that his wife (i.e. Santosh) is seriously ill; he does not disclose that she is no longer alive.

10. Taking all the above circumstances, the rival arguments and the material on record into account, I do not think that this is a fit case for grant of bail. I do share the apprehension expressed by the learned Additional Public Prosecutor that granting bail at this stage, when the trial is about to close involves the risk of the accused fleeing from justice. I, therefore, reject the bail application. (R.V. EASWAR) JUDGE MAY 7.2013 hs

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