

Kashmeri Devi

Vs

Delhi Administration and Another

Criminal Appeal No. 280 of 1988

(K.N. Singh, M.H. Kania JJ)

25.04.1988

ORDER

1. Special leave granted.

2. This is an unfortunate case which tends to shake the credibility of police investigation and undermines the faith of common man in Delhi Police which is supposed to protect life and liberty of citizens and maintain law and order. There have been serious allegations of murder by torture against the police and further about the haphazard manner in which the investigation against the accused police officers was investigated with a view to shield the guilty members of the Delhi Police.

3. Kashmeri Devi the appellant is the unfortunate widow of Gopi Ram deceased who was a tonga driver. On the fateful night of August 22/23, 1986 two Sub-Inspectors accompanied by two Constables visited the house of Sudesh Kumar of Prem Nagar. It is alleged that they started beating Sudesh Kumar. Hearing his shrieks his maternal uncle Gopi Ram deceased came to the spot, he tried to intervene whereupon the police men are alleged to have given him beating also. Gopi Ram and Sudesh Kumar both were arrested and taken to the Police Station Patel Nagar where they were stripped of their clothes and the policemen gave them serious beating with the help of iron rods and iron rulers. It is alleged that Gopi Ram succumbed to his injuries at the police station sustained at the hands of Satish Kumar and Rana Sub-Inspector and Jagmal Singh and Romesh Constables while in police custody. It is alleged that thereafter a post-mortem was conducted and the dead body of Gopi Ram was cremated without handing over the dead body to the appellant. This incident caused consternation in the locality and on August 23, 1986 a mob surrounded the police station to lodge its protest against the death of Gopi Ram deceased at the police hands. Undaunted the Patel Nagar police registered a case under Sections 147/148/149/353/332 of the Indian Penal Code against Shankar brother of the deceased who was arrested along with others on August 23, 1986 as they were members of the mob. Sudesh Kumar who had been taken to the police station along with Gopi Ram filed a written complaint at the Police Station Patel Nagar on August 23, 1986 making allegations against the two Sub-Inspectors and the Constables. In that complaint Sudesh Kumar alleged that as a result of beating by police officers his maternal uncle became unconscious and thereafter the police officers kept on beating him at the police station as a result of which he died. He further alleged that the police officers took the dead body of Gopi Ram to the hospital from there they brought it to another hospital, where he was forced to sign blank papers. He named the police officers who were responsible for the death of his maternal uncle. On that complaint a case was registered under Sections 302/342 IPC against the police officers of Patel Nagar Police Station but no action was taken against the police officers. After some time case was converted to Section 304 IPC for purpose of investigation. The appellant

Kashmeri Devi approached the High Court by means of a writ petition under Article 226 of the Constitution for transferring the investigation of the case from the Crime Branch of the Delhi Police to Central Bureau of Investigation. Division Bench of the High Court dismissed the writ petition by its order dated September 26, 1986. Thereupon, the appellant approached this Court by means of special leave petition.

4. During the pendency of the special leave petition this Court granted time to the respondents twice for filing counter-affidavit but the respondents failed to file their counter-affidavit. Ultimately on April 11, 1988 Kanwaljit Deol, Deputy Commissioner of Police, Head Quarters has filed counter-affidavit setting out a totally different story. He has stated that on August 23, 1986 the police received information that one Gopi of Prem Nagar was brought dead by Sudesh Kumar for Prem Nagar to Ram Manohar Lohia Hospital, New Delhi. On receipt of the information from the hospital one Sub-Inspector of police went to Dr. Ram Manohar Lohia Hospital had obtained medical legal certificate of the deceased Gopi Ram. It is alleged that on a personal search of the deceased's body the police recovered five small packets of smack from his pocket. In his affidavit an attempt has been made out to show that Gopi Ram had died on account of alcohol and morphine and not on account of any injuries caused to him by the police and in this connection a story has been set up that Sudesh Kumar had brought the dead body to Dr. Ram Manohar Lohia Hospital and on receiving information from the hospital the police made recovery of smack from the deceased's pocket. The affidavit is completely silent about the allegations made by the appellant that Gopi Ram and Sudesh Kumar were arrested taken to the police station and Gopi Ram was beaten to death. The affidavit further refers to some medical report which purports to state that deceased died on account of alcohol and morphine. It is further stated that after taking into consideration the cause of the death given by the doctor, charges were amended to Section 323/342/34 IPC and after completing the investigation challan was prepared and the same has been put in the Magistrate's court. The affidavit of Kanwaljit Deol states that in the absence of evidence the story set up by Sudesh Kumar could not be substantiated.

5. After hearing learned counsel for the parties and on persual of the record we are satisfied that prima facie the police have not acted in a forthright manner in investigating the case, registered on the complaint of Sudesh Kumar. The circumstances available on record prima facie show that effort has been made to protect and shield the guilty officers of the police who are alleged to have perpetrated the barbaric offence of murdering Gopi Ram by beating and torturing. The appellant has been crying hoarse to get the investigation done by an independent authority but none responded to her complaint. The Additional Sessions Judge while considering the bail application of Jagmal Singh, Constable, considered the autopsy report and observed that doctor had postponed giving his opinion regarding the cause of death although the injuries were ante-mortem. The learned Sessions Judge referring to a number of circumstances observed that the investigating officer had converted the case from Section 302 IPC to Section 304 IPC on flimsy grounds within hours of the registration of the case even without waiting for the post-mortem report. The learned Sessions Judge further observed that it was a prima facie case of deliberate murder of an innocent illiterate poor citizen of Delhi in police custody and investigation was partisan.

6. We are in full agreement with the observations made by the learned Sessions Judge. As already noted during the pendency of the writ petition before the High Court and Special leave petition before this Court the case was further converted from Section 304 IPC to Section 323/34 IPC. Prima facie the police has acted in partisan manner to shield the real culprits and the investigation of the case has not been done in a proper and objective manner. We are therefore of the opinion that in the interest of justice it is necessary to get a fresh investigation made through an independent authority

so that truth may be known.

7. Since according to the respondents charge-sheet has already been submitted to the Magistrate we direct the trial court before whom the charge-sheet has been submitted to exercise his powers under Section 173(8) CrPC to direct the Central Bureau of Investigation for proper and thorough investigation of the case. On issue of such direction the Central Bureau of Investigation of the case in an independent and objective manner and it will further submit additional charge-sheet, if any, in accordance with law. The appeal stands disposed or accordingly.

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