

(2011) 01 GUJ CK 0083

In the Gujarat High Court

Case No : Special Criminal Application No. 925 of 2003

Lila Kaur

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 10-01-2011

Acts Referred:

Arms Act, 1959 — Section 25(1)
Penal Code, 1860 (IPC) — Section 399

Citation : (2011) 3 Crimes 214

Hon'ble Judges : Akil Abdul Hamid Kureshi, J

Bench : Single Bench

Advocate : D.C. Sejjpal, APP for the Respondent No. 1 Rule not received back for the Respondent No. 2 Rule served for the Respondents No. 3-6, for the Respondent

Final Decision : Dismissed

Judgement

Akil Kureshi, J.—Petitioner is wife of one Livarsing Tejsing who died an unnatural death while in police custody. Husband of the Petitioner was arrested in connection with C.R. No. 296/02 filed before Ankleshwar Police Station alleging offence punishable u/s 399 of the Indian Penal Code read with Section 25(1) of the Arms Act.

2. The accused was brought before the police station through a transfer warrant since he was in custody in connection with another case bearing C.R. No. 111/02 pursuant to the order dated 21st May, 2003 passed by the Judicial Magistrate, First Class, Surat. The accused was found dead in police custody on 25.5.2003. It is the case of the Petitioner that the accused died due to police excess. The Petitioner has, therefore, prayed for transfer of investigation to CBI and also for compensation of Rs. 5,00,000.

3. On the other hand, case of the Respondents is that after being brought before the Ankleshwar police station, husband of the Petitioner was taken in remand for five days permitted by the learned Magistrate. On 25th May, 2003 in the early

hours, he was found hanging in the toilet of the police station where he was kept along with other accused persons.

4. In response to the notice issued by this Court, a detailed affidavit has been filed by one Shri M.L. Ninama, Assistant Commissioner of Police on 1st September 2004 describing the steps taken in inquiring into the unnatural death of the husband of the Petitioner. It appears that in addition to drawing inquest, statements of witnesses including the relatives of the deceased were recorded which show that cause of death as strangulation. The affidavit, therefore, concludes that the husband of the Petitioner died by committing suicide.

5. Counsel for the Petitioner submitted that the post-mortem report suggested that death occurred within 4 to 5 hours of last meal and this does not match with the theory of the committing suicide during early hours of the morning. He further submitted that the height of ceiling of the toilet and other measurements found in the inquest panchnama rules out any possibility of suicide by hanging since the legs of the deceased would be touching the ground preventing any possibility of suicidal death by hanging. He also drew my attention to certain injuries found on the body of the accused besides around his neck.

6. On the other hand, learned APP opposed the petition contending that thorough investigation was carried out. Statements of witnesses including other inmates do not show any foul play. No case for granting compensation is made out.

7. Having thus heard the Learned Advocates appearing for the parties and having perused the documents on record, it emerges that the post-mortem report conclusively indicates death due to strangulation. Injury marks around the neck of the deceased were also found in the inquest as well in the post-mortem report. The fact that the husband of the Petitioner died due to strangulation, therefore, does not seem in any serious dispute. Further, there were other persons kept in the same lock-up. None of these persons have thrown any light on any foul play with respect to the death of the accused. In fact, statement of one of the witnesses, Mohmed Sajid Shaikh who was also kept in the same jock-up reveals that in the early morning of 25th May, 2003, when he wanted to go to toilet, he was told by the police authorities that the husband of the Petitioner is already inside since 15 minutes and when he banged the door of the toilet, it got opened and he found that the husband of the Petitioner was hanging from the ceiling.

8. Nothing has been produced on record to dispel the theory of suicide of the husband of the Petitioner. All indications are that while in police custody, he used his turban to hang himself in the ceiling of the toilet and some minor external injuries which are in any case not serious would not dispel this theory. Such injuries are easily possible when a person tries to hang himself in the ceiling. In any case, such injuries not being significant, other overwhelming evidence pointing to the suicidal death of the deceased would not stand dislodged. The height of the toilet is shown to be 2.40 meters sufficient to enable any person of

normal height to hang oneself. Discrepancy in the time of death after last meal by itself would not permit me to discard the report of the Respondents particularly when it is not clear when the accused had consumed food last before committing suicide.

9. In the result, no case for interference is made out. The petition is therefore dismissed. Rule is discharged.

Petition dismissed.