

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

RESERVED ON : 23rd APRIL, 2018
DECIDED ON : 18th MAY, 2018

+ **W.P.(CRL) 1364/2013**

AWUNGSHI CHIRMAYO & ANR. Petitioners

Through : Mr.Colin Gonsalves, Sr.Advocate with
Ms.Olivia Bang with Ms.Pragya Singh, Advocates.

versus

GOVT. OF NCT & ORS. Respondents

Through : Mr.Rahul Mehra, Standing Counsel with
Mr.Jamal Akhtar, Advocate for State.
Mr.Sanjeev Bhandari, SPP with Mr.Prateek Kumar,
Advocate for CBI.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Present writ petition under Article 226 of the Constitution of India read with Section 482 Cr.P.C. has been preferred by the petitioners – Awungshi Chirmayo and Thotreithem Longpinao for transfer of the investigation and prosecution in case FIR No.253/2013 PS Malviya Nagar to CBI. Status reports are on record.

2. I have heard the learned Senior Counsel for the petitioners and learned Standing Counsel for the State – Mr.Rahul Mehra and have examined the file.

3. The victim aged around 25 years was residing as a licensee at 424-B, Ground Floor, Chirag Delhi, since April, 2013. The

landlord lived on the ground floor of three storey building, adjacent to the premises occupied by the victim. On 29.05.2013, the victim was found dead in her rented accommodation. The landlord gave intimation to PCR on 29.05.2013 and it came to be recorded as DD No.20A at around 11.48 a.m. The investigation was assigned to SI Dinesh who along with other police staff reached the spot. The door of the room was broken open and the victim was found dead in the room with injury marks on her face and toe. Empty wrappers of sixteen tablets of Spasmocip Plus and ten tablets of Meftal Spas were found in the dustbin of the victim's room. The CFSL team visited the spot and inspected the crime scene; it took photographs. The local police seized various exhibits.

4. Post-mortem examination on the victim's body was conducted on 30.05.2013 at AIIMS. The viscera was preserved and the cause of death was kept pending. It was opined that the injuries on the body of the deceased showed nibbling marks and were post-mortem in origin.

5. On 31.05.2013, FIR 253/2013 came to be registered at PS Malviya Nagar for commission of offence punishable under Section 306 IPC. On 01.06.2013, the investigation was transferred to Crime Branch. It was suspected by the relatives of the victim that it was a case of rape-cum-murder. They suspected the involvement of landlord and his brother-in-law in the crime. Section 306 IPC was altered to Section 302 IPC.

6. On the demand of the victim's relatives, re-post-mortem examination on the body was conducted. A medical board consisting

of senior doctors of Delhi Government was constituted; the second post-mortem examination of the body was conducted on 04.06.2013. Certain questions were asked at the instance of the victim's relatives from the concerned doctors. Cause of death was kept pending.

7. During investigation, the viscera report was received and it was opined that no poison or drug could be detected in the exhibits. The Histopathology samples were deposited at AIIMS and in the report it was opined that the skin from the wound sites did not show any signs of inflammation. The victim's clothes and vaginal swabs were sent for examination to FSL, human semen was detected on the cut / torn pant and underwear of the deceased. The human semen was further sent for DNA profiling. Blood samples of both the landlord Raj Kumar and his brother-in-law Amit Sharma were collected and deposited with FSL Rohini on 16.12.2013 for DNA profiling. The report revealed that the DNA profiling (STR analysis) performed in the source of Ex.3a (panty of deceased) and Ex.3b (underwear of the deceased) and Ex.4 and Ex.5 i.e. blood samples of suspects Raj Kumar and Amit Sharma were not matching with the DNA profile from the source of Ex.3a and Ex.3b. Both, Raj Kumar and Amit Sharma were put to sustained interrogation. Polygraph tests were conducted on 27.12.2013 and 30.12.2013 but it yielded no result to implicate the landlord and his brother-in-law.

8. Learned Senior Counsel for the petitioners urged that the investigation has not been carried out in a fair and proper manner. From the very inception, the petitioners had suspected the involvement of the landlord and his brother-in-law for the sexual assault upon the

victim and her murder. However, none of them was taken into custody for interrogation. The floor plan showed that the landlord and his brother-in-law had access to the residence of the deceased by climbing over a seven feet iron grill and through the side door. They had also the key of the front door of the premises. The side door did not have any automatic closing lock; it had to be closed manually from inside. The landlord and his brother-in-law had an antagonistic relationship with the deceased. Amit Sharma was pushing himself for a sexual relationship with the deceased which was repulsed by her. On 23.05.2013 and 24.05.2013, the victim during her stay with the petitioners had informed them about her harassment by Amit Sharma. The victim was particularly upset as she was called to the residence of the landlord on the pretext to show him as to how to feed the fishes in the fish tank in the landlord's house. There Amit Sharma caught her hand tightly and pushed her down on a chair and started telling her not to be afraid of him and that if she had any problem or could not pay the rent, he would look after it. The victim was very scared and managed to extricate herself to return to her room. The petitioners advised the victim to stay away from Amit Sharma and not to interact with him in any manner. It is further urged that Bernice - victim's sister who lived with her also informed that Amit Sharma used to stalk the deceased; he would constantly watch her and keep calling her on the mobile. One morning in April, there was heated argument between Amit Sharma and the deceased over payment of broker's charges. A few days later Amit Sharma apologized but continued to stalk her.

9. On another occasion, Amit Sharma had grabbed the victim's hand and asked her to come outside as he wanted to talk to her when she arrived along with her friend at 04.30 a.m. and made a telephone call to have the key of the room. It is contended that the local police did not implicate the landlord and his brother-in-law due to their close nexus with a local politician of the area. Initially, the police of PS Malviya Nagar declined to register the FIR. It is a clear case of murder. The police theory of rodents nibbling on the corpse is unbelievable. The victim had grievous injuries on her body and the blood had scattered on the floor which could have been a result of a blow to the face.

10. Learned Standing Counsel for the State urged that every effort has been made by the investigating agencies to proceed with the investigation in a fair and proper manner. The boyfriend – Angam who used to visit the victim is untraceable. Attempts have been made to find him out but to no avail.

11. On perusal of the sequence of the events referred above, it reveals that the victim used to live in the rented accommodation owned by landlord Raj Kumar. She was found dead in her room on 29.05.2013. The information about the occurrence was conveyed to the police at around 11.00 a.m. by the landlord. It is also not in question that FIR initially lodged under Section 306 IPC on 31.05.2013 was converted to Section 302 IPC on 03.06.2013. The investigation was transferred to Crime Branch. The perpetrator of the crime, however, could not be apprehended or arrested despite efforts made by the investigating agency. The case is entirely based upon

circumstantial evidence. The involvement of the landlord and his brother-in-law was suspected by the victim's relatives. Status reports filed on various dates from time to time reveal that both of them were associated in the investigation and were interrogated on several occasions. The polygraph tests were conducted on 27.12.2013 and 30.12.2013. Their blood samples were taken to find out if it matched with the semen found on the undergarments of the deceased. DNA profiling, however, revealed that the human semen was not that of the landlord or his brother-in-law. It is informed that various individuals of the locality were examined, however, no evidence has emerged to implicate the landlord or his brother-in-law. Third Medical Board was constituted on 17.09.2014; cause of death has remained unascertained.

12. It is also not at issue that the victim had telephonic conversation with Amit Sharma only on one occasion. During investigation, the call details of the mobile No. 8376987377 of the deceased were analyzed and it was found that she had made telephone call to Amit Sharma on his mobile No.9811357876 three times on the night intervening 20/21.05.2013 at 03.19 a.m., 03.20 a.m. and 03.22 a.m. for a very short duration. It was found that the said calls were made by the victim to Amit Sharma to get keys to the main entry gate. The investigating agency did not find any other conversation or SMS exchanged between the victim and Amit Sharma.

13. Regarding allegations that prior to the incident Amit Sharma had sexually harassed the victim, there is no credible evidence on record at this stage. Admitted position is that the victim or the petitioners never lodged any complaint against Amit Sharma or the

landlord for any such sexual assault. Status report reveals that these allegations were not mentioned by the petitioners in their complaint dated 29.05.2013 given to the investigating agency.

14. Regarding the victim's mobile phone, status report reveals that it has been deposited with Truth Lab Forensic Services for retrieving the data on 15.12.2017. Earlier, the mobile was sent to FSL Rohini. It was reported that as the mobile was password protected, data could not be analysed. Due to non-availability of analysis facilities available in the laboratory, it was again sent to CFSL, CBI but again the said agency was not unable to extricate the data from the phone.

15. Relevant to note is that the investigating agency at one stage had filed cancellation report before the Trial Court. However, on 11.04.2017 it agreed to withdraw the cancellation report from the CMM (South) and to carry out further investigation. This Court desired DCP (Crime) to personally supervise the further investigation and it was so done.

16. The petitioners and other natives from the State have been associated during investigation by the investigating agency. They have been apprised about the progress of the case from time to time. They have been requested to provide the contact number and address of the victim's friend.

17. The prime suspect is Angam – victim's boy friend. Para No.8 of the petition records that the boyfriend picked the deceased from Leimichon's house after work at around 04.30 a.m. and went to the victim's residence in early May, 2013. On 28.05.2013, the victim

talked to Leimichon on her phone number of times inviting her to join her and her boyfriend for lunch. She did not do. On that day at around 03.00 p.m. The victim and her boyfriend went to Leimichon's house. At 04.30 p.m., the deceased called Leimichon and told her that she had an argument with her boyfriend and that he had left the premises. At 07.30 p.m., Leimichon called the deceased over her mobile but it was busy. She went to her residence at around 08.30 p.m. The deceased declined to open the door; Leimichon then immediately left the premises. At about 09.30 p.m. the same day, victim's boyfriend went to her house and on his way back between 09.30 p.m. and 10.00 p.m. he met Leimichon's sister Rinsophy Kaping and informed her that the victim had not opened the door despite his knocking at it and did not get any response. Apparently, something had happened on 28.05.2013 which compelled the victim not to open the door even to Leimichon and her boyfriend Angam.

18. Angam was not available to join the investigation soon after the incident. He did not lodge any complaint along with his other friends from North-East States for the murder of his girlfriend. He remained absconding and despite best efforts by the police he could not be traced. The petitioners who were aware about the identity of the victim's boyfriend i.e. Angam did not disclose as to at what call centre he used to work, if so, since when. It was also not revealed as to where he used to reside, and if yes, since when. The investigating agency visited Angam's native place many times but his whereabouts could not be found. The petitioners had provided different telephone numbers but these were found not to be issued in the name of Angam.

The needle of suspicion revolves around Angam's involvement and the circumstance of abscondance is a strong piece of evidence against him. Status report reveals that the photos of the victim's boyfriend have been shown to his possible acquaintance at several places; the photographs have been placed on record. However, he could not be found. The police teams have visited Imphal (Manipur) too.

19. The investigation has been carried out by the investigating agency seemingly without any bias. Nothing has emerged on record if the landlord Raj Kumar and his brother-in-law Amit Sharma were having strong connection with any politician to influence the investigation. The petitioners have not furnished clinching evidence to, prima facie, infer the involvement of Raj Kumar and Amit Sharma in the crime. Their suspicion is based upon 'no evidence'. Merely because, the landlord and his brother-in-law had access to the victim's room by scaling the 7 feet grill, it cannot be inferred at this stage that it was they who had committed the crime.

20. Since all efforts have been made by the Crime Branch to solve the case, handing over the investigation to CBI, at this stage, would serve no purpose. Investigation to CBI can be ordered only in exceptional situation and such an order is not to be passed as a routine merely because, a party has levelled vague allegations. [*State of West Bengal & Ors. vs. Committee for Protection of Democratic Rights*, 2010 (3) SCC 571].

21. Having regard to the materials on record, in my considered view, the case in hand is not such an exceptional case warranting special investigation by CBI.

22. The writ petition is dismissed. The investigating agency, however, shall continue to carry out the investigation as per law.

23. Observations in the order shall have no impact upon the merits of the case.

(S.P.GARG)
JUDGE

MAY 18, 2018 / *tr*

