

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

% Decided on: 24th September, 2018

+ **W.P.(CRL) 545/2018**

VIDYA DEVI

..... Petitioner

Represented by: Mr.A.K.Padhy, Advocate

versus

STATE (GOVT.NCT OF DELHI)

..... Respondent

Represented by: Mr.Rahul Mehra, Standing Counsel
with Mr.Jamal Akhtar and
Mr.Chaitanya Gosain, Advocates

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. By this petition, the petitioner who is the mother of the deceased Deepak prays for a de-novo/re-investigation by another agency except the local police in case FIR No.236/2016 under Sections 302/452/341/324/34 IPC read with Section 120-B IPC registered at PS Khyala. The petitioner also prays for conducting a DNA test of the two children of Radha namely Naina and Harsh to detect the actual parentage.

2. From the narration of facts which would be hereinafter adverted to it will be seen that the second prayer as noted above has no relevance to the facts of the present petition and cannot be granted in the present petition.

3. As regards the first prayer of de-novo/re-investigation of FIR No.236/2016 is concerned, facts of the case are that on 19th May, 2016 at around 10:50 PM, a PCR call was received regarding firing that took place at Narsingh Garden, Khyala on which DD No.52-A was recorded. The same

was marked to ASI Surta Nand who reached the place of incident i.e. RZ-B-105, Narsingh Garden, Khyala and found blood was scattered over there. The injured had been taken to Guru Gobind Singh Hospital. On reaching the hospital, it was revealed that the injured Deepak S/o Shankar Singh, R/o RZ-B-105, was brought in a PCR van and had been referred to DDU Hospital and from DDU Hospital, he was referred to Safdarjung Hospital. In the MLC of injured Deepak, alleged history of stab injury by sharp object was mentioned.

4. At the spot, sister of the injured Deepak, Sonia Singh who is also the daughter of the petitioner was found. Statement of Sonia Singh was recorded who stated that she was residing at RZ-B-105 along with her mother and brother. Uday Kumar was running a general merchant shop on rent. At the shop of Uday, his brother and certain other unwanted people used to stand, abuse and quarrel. Since the complainant and her family were residing in the neighbourhood, they used to object to their behaviour. 4-5 days prior to the incident for this very reason, there was a quarrel between Sonia Singh and her brother on the one side and Uday Singh and others on the other side. On 9th May, 2016 at about 10:00 PM she was standing along with her uncle Manoj on the road when Uday and his brother Pankaj, cousin brother Rajesh, friend Raju Kabadi were also there. As they wanted to ask them about the earlier quarrel, she along with her mother Vidya Devi and uncle went to the shop of Uday and both the sides abused each other. On hearing the quarrel, her brother Deepak also came from home and objected. On this Uday, Pankaj and Rajesh caught hold of his brother and Raju Kabadi stabbed her brother with knives. Somehow her brother managed to escape and ran towards his house when all of them entered their house and

assaulted her brother even in the house. Thereafter they ran away. She called 100 number and sent her brother to the hospital. She stated that her brother has got injuries by knife on the right thigh. She also stated that she knew Uday, Pankaj, Rajesh and Raju Kabadi properly and can identify them, they had attacked her brother and thus action be taken against them.

5. As noted above, from the statement of Sonia Singh, petitioner Vidya Devi and her brother Manoj were also present at the spot and were eye witnesses. Statements of Vidya Devi and Manoj were also recorded who also reiterated the version of Sonia Singh. In the three versions, no one mentioned about the firing incident. Even in the MLC alleged history of stab injury by sharp object was mentioned and as told by patient himself. The injured was accompanied by the family members as phone number of the cousin Tejpal is also mentioned on the MLC. Crime team was also called at the spot which took the photographs however there is no mention of any cartridge cases or fired bullet present at the spot. Even in the crime team report, history noted at 12:30 AM on 20th May, 2016 i.e. within less than two hours of the incident was that Deepak S/o Shankar Singh has been assaulted by a sharp weapon. Deepak passed away on 20th May, 2016 itself and on the same day at 12:30 noon his post-mortem was conducted wherein again the alleged history of deceased sustaining stab injuries by sharp object on 19th May, 2016 at about 10:45 PM has been noted. Even the post-mortem examination notes two stab injuries; one on the lateral aspect of the right thigh and the other the posterior aspect of the left thigh above left knee joint. The cause of death has been opined to be due to haemorrhagic shock as a result of ante-mortem injury sustaining to both thighs produced by pointed single edged weapon. It was also opined that the injuries were

collectively and individually sufficient to cause death in the ordinary course of nature and were ante-mortem in nature.

6. The entire case of the petitioner trying to falsify the investigation is based on some photographs taken from the place of incident, PCR call noting that firing had taken place and that he has placed on record recorded versions of other eye witnesses who were present at the spot. From the photographs placed on the record, no inference can be drawn that at the relevant time, firing had taken place. Further the PCR call was made by one Nawab Chand whose statement under Section 161 Cr.P.C. was recorded who stated that he knew Shankar Singh being from a political family who had died. He had a juice shop in the area. After his death, the shop was being run by his son but he did not know whether it was the younger or the elder son or how many sons Shankar Singh had. He further stated that on 19th May, 2016 at 10:45/10:55 PM, he received a phone call wherein the speaker told him that she was Sonia, daughter of Late Shankar Singh and also informed him that someone has fired on her brother and the police was not coming. According to Nawab Chand on the basis of this information he made a PCR call with the information that firing had taken place. He had no personal knowledge about the person who was speaking on the phone and what had transpired.

7. From the facts as noted above, it is amply clear that the case of the prosecution based on the statements of the eye witnesses is of stabbing and as put by the petitioner's counsel at this stage that before stabbing, firing took place to scare them is not fortified by any of the statements. Be that as it may. The petitioner along with her daughter and brother are eye witnesses to the incident and will be appearing in the witness box to depose.

8. Learned Standing Counsel for the State submits that out of 28 witnesses, 6 witnesses have already been examined. However, neither the petitioner nor her daughter and brother have appeared in the witness box. He further states that one of the accused has been declared a proclaimed offender and as and when he is apprehended, supplementary charge sheet qua him will be filed.

9. It is well settled that a de-novo or re-investigation cannot be ordered. In the present case, the statements of the eye witnesses are in consonance with the other attending evidence on record including the MLC and the post-mortem report. Further charge sheet has already been filed. Thus, this Court finds no ground to direct de-novo or re-investigation in the case.

10. Petition is dismissed.

SEPTEMBER 24, 2018
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(MUKTA GUPTA)
JUDGE

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