

Ashok Dhariwal vs State Of Rajasthan on 19 May, 1982

Equivalent citations: 1982WLN264

JUDGMENT

G.M. Lodha, J.

1. Dowry death or accidental one, is the debate. The 'fumes, fire and flames' produced from the charred flesh of Hansa Rani, tells 'tell tale' of murder by Ashok, motivated due to failure of her parents to satisfy the ever increasing greed and lust of (money) dowry, is the pivot of prosecution story. Accidental "burning alive" is the defence.

2. The twin letters unfolding, unveiling, and unearthing the sensational, stratling tragic tale of woe and tears of Hansa, matrimonial tragedy, makes too pathetic, hair raising, nerve shocking and society rocking reading. The defence story of their fabrication, true or false, is yet to be adjudicated.

3. Deceased wife a post graduate clerk of Sales Tax department, and Accused husband, a Gold medalist Lecturer of Engineering, College, prima facie shows that education hardly detracts crime of dowry deaths, if the prosecution story is true. "Bail before Jail" is the prayer of defence. Gallows to dowry murderers, the contra demand of prosecution.

4. Detached from the above heat generated on the ashes of Hansa and attached to "Justice according to Law" on objective consideration of facts, rather than flights and fiction, is the task of court.

5. And now the traditional narration of case. This is a second bail application by one Ashok Dhariwal, who is required to face investigation in a case, which has been registered under Section 302 I.P.C. against him for causing murder of none-else but his own wife one Hansa Rani and that too on the allegation that the dowry having not been paid by the parents of the girl, the wife Hansa Rani was burnt alive.

6. On 6th May, 1982, the application under Section 438 was dismissed after the adjournment was refused on account of the earlier adjournment history of the case.

7. Today, an application has been moved by Mr. Choudhary learned Counsel for the petitioner mentioning that the petitioner does not want to press this application under Section 438 Cr. P. C. on merits, and the same may be dismissed.

8. The learned Public Prosecutor submitted that the petitioner has remained absconding since 9-6-81 when the case was registered against him. Since 9th March, 1982 standing warrant for his arrest has been issued. It was pointed out that in case the application is not decided on merits, the accused, who has earlier also got the case dismissed as not pressed on 6-5-82 would file a third or

fourth bail application and if necessary by changing of the counsel and before different judges and that would be misuse and abuse of process of court. In support of this, it was pointed out that whereas the earlier bail application was dismissed on 6-5-82, the present bail application was filed immediately thereafter on 10th May, 1982 without there being any change of circumstances or any fresh developments.

9. The learned Public Prosecutor pointed out that the case is of very heinous nature and the fact that the accused is not surrendering and avoiding arrest, aggravates its seriousness.

10. The above allegations were controverted by Mr. Choudhary, who submitted that the police interrogated the accused Dumber of times but did not arrest him presumably because the police was in two minds and it is only recently that effort is being made to arrest him.

11. The investigation file was also placed before me by the learned public prosecutor in support of his contention.

12. Undoubtedly, the filing of two successive bail applications under Section 438 one after the other shows that the accused wants to take a chance after dismissal of the first.

13. It is also to be noted that in criminal matters, a party cannot be given an absolute right of withdrawal or not pressing the matter after filing the same, because it has been enjoined upon the court to administer justice more particularly when it concerns the Liberty of a person. Liberty is an unalienable right.

14. The liberty of a person is not a matter which can either be withdrawn by a citizen or which can be encroached upon or removed by the State without the authority of law by bargain or compromise and the courts cannot remain silent spectators, leaving it to the whim, caprice or strategy of either of the parties.

15. The entire scheme of the criminal jurisprudence and our criminal law is based on the bedrock of certain duties enjoined upon the courts. This is the reason why even when a party is not represented, the courts provide a counsel to defend him. This is why even when an accused pleads guilty in a given case, the court can insist on proof if the circumstances so warrant. The whole underlying principle is that it is not left to individuals, like in a civil suit or a civil dispute but it is a matter, where society as a whole on the one hand and the interest individuals on the other coupled with it is the function of the State, which, are to be balanced and the criminal courts are required to act as watch-dogs of the liberty and rights of citizens, which have been given in the Constitution and more particularly in Chapter III on the Fundamental Rights.

16. In this view of the matter, I am firmly of the view that a party in a criminal case cannot be permitted unqualified right to withdraw or press or not to press the criminal matter before a criminal court, though if it is bonafide done in a given case, looking to the facts and circumstances of the case, the court after application of its mind may pass appropriate orders.

17. In other words, the power of withdrawal or not pressing cannot be treated as a veto power over and above the powers of the courts in criminal matters.

18. In view of my above findings, I have applied ray mini broadly to the facts of the case so that the rights of any of the parties may not be prejudiced in future. In the bail application, which has been filed by the petitioner and the petitioner is also said to be an educated person, allegations have been made that this was a case of accidental injury and not a case of homicide. It has also been alleged that investigation changed hands from time to time The petitioner is said to be a lecturer in Engineering College and is a goldmedalist. It has also been alleged that in the course of investigation, the Inspector General of police Shri G. C. Singhvi happened to be a relation of the complainant party and enquiry was ordered after the Dy. Inspector of police, C. I D. gave a note that no case is made out and a final report may be filed. Shri A.P. Tiwari, S.P. C. I. D. crimes has interrogated the petitioner and now in view of the changed circumstance particularly the change of investigation, the accused apprehends that he would be arrested in a false case and his career would be ruined.

19. An important feature of the case pointed out in the bail application is that in the dying declaration, Hansa Rani deceased admitted that it was a case of accidental burning due to stove as her sari caught fire.

20. Mr. Choudhary then argued the case at length. He pointed out that both deceased Hansa Rani and the complainant Kailash brother of the deceased who later on filed the first information report after the death no where alleged earlier to the death of the deceased that she was burned by Ashok Dhariwal and her in laws. The doctors attending the deceased made inquiries from the deceased but at no time the deceased alleged that it was a case where the burning was not accidental but it was homicidal. According to Mr. Choudhary the earlier investigation which was the first in point of time clearly revealed and proved that it was a case of accidental death.

21. The Riksha driver Ganpat Chouhan also gave the same statement before the investigating officer who first examined him. Various facts of (he case were pointed out by Mr. Choudhary in order to substantiate his submission that this was a case of pure accidental burning by stove when the deceased wanted to lit the stove for having some medicine as she was under treatment. In support of it Mr. Choudhary also pointed out that even some parts of the body of the accused were burnt in an effort to save the deceased from burning.

22 Regarding the witnesses who are alleged to be neighbours and who have later on deposed that they heard the cries of "Bale re Bale re". Mr. Choudhary pointed out that they are not residing in that very street and therefore Gautam Bhandari and others whose testimony is now sought to be used as the witness who heard the cries of the deceased, which proves that it was a case of homicide are all concocted and false witnesses. According to Mr. Choudhary the present one was a case where there was not the remotest chances of the accused being committed and since all the investigating agencies have already interrogated the accused Ashok Dhariwal there was no necessity for arresting him now except putting him to harassment and humiliation

23. Mr. Shishodia and Dr. Bhandawat the public prosecutors vehemently opposed the bail application and argued that demand of "bail before jail" in such a heinous case is an extraordinary prayer, which should be rejected outrightly. It was pointed out that the earlier investigating Officer Mr. Harendra Singh, S.H.O. was won over by the accused and that necessitated the change on the investigating agency.

24. Mr. Shishodia's contention is that the two letters written by the deceased girl before her death provides clinching evidence to show that the accused was out to torture and kill the deceased on account of nonfulfilment of the demand of dowry. He attempted to kill her not once but many a times. The statement of Bhawani Singh an employee of the Sales Tax Department where deceased was serving was also read over to show that Hansa Rani used to lead a very tragic and pathetic life on account of fear and terror and torture of her husband and she was not permitted even to spend money for drinking tea in office. She always apprehended that her husband would beat or kill her.

25. Mr. Shishodia pointed out at this stage the evidence of Gautam Bhandari and other neighbours who were attracted by the shrieks and cries of the deceased in the dead of the night, coupled with the evidence of the Riksha driver add the nurse Miss David who states that in the hospital the deceased before her death stated that, no body would burn herself voluntarily, provides ample evidence to show that the death of Hansa Rani was not accidental on account of accidental burning as alleged by the accused. It was a case of deep laid preplanned conspiracy by the inlaws in which the husband was the principal accused. In execution of that conspiracy she was called at the house of inlaws under the pretext that she will be required to go to "Nakora temple", little knowing that it would turn out to be a warrant of death and after being put in the trap she was burnt alive in the night.

26. In view of the fact that investigation is in progress it would be in the interest of either of the parties to express any opinion about the merits of the case. It is true that investigation has changed hands and the accused had made a serious allegation that the present Inspector General of Police has handed over the investigation to the Superintendent of Police, C.I.D. crimes because of his relationship with the complainant, but I am of the opinion that at the moment there is nothing to substantiate this allegation.

27. The change of investigating agencies in crimes of such a serious nature where allegations and counter allegations are made and where the death was accidental or homicidal becomes serious question not only of individual importance but of social importance being a crime against the society, is not unnatural or an abnormal phenomenon. Even in the ordinary crimes, if any of the parties makes allegation that the investigation is not fair the superior officers of the police are not only authorised but in order to ensure impartiality and fairness change the investigating agency so that the public confidence in the investigating agencies and the police force to unfold the crimes and not to protect any one howsoever high up, resourceful he may be, is maintained as this is one of the necessary requirement of a good Government and an effective police administrative agency. That being so at this stage I am not inclined to accept the allegation that by changing the investigating agencies in the facts and circumstances of the case as revealed by the investigation file, the top-brass of the police administration has shown any favour to the complainant party.

28. Contrary to it I am of the opinion that they have discharged the responsibilities which is expected from them and in doing so they have acted with bonafide motive of unfolding the crime and not permitting the police officers who are local police officers to hush up the matter, if any such attempt was made.

29. In deed the crime, if proved is bound to be a serious one because of the allegation that Hansa Rani who was an educated woman and was married to yet well educated husband, was being put to constant torture of death for the purpose of obtaining dowry; whether the crime is proved or not finally is a matter to which no opinion should be expressed by this Court at this stage as it would depend upon the cumulative effect of the entire evidence produced in the case and it should be left to the judgment of the trial court at the appropriate stage. The crucial, relevant and material question at this stage is where the extra ordinary request of 'bail before jail' in the form of anticipatory bail under Section 438 Cr.P.C. should be accepted in the facts and circumstances of this case.

30. The two letters undoubtedly carry a 'tell tale' of the mental agony of a young married girl who, was being put to terrible physical torture of death some times, humiliation and harassment, at other times and constant mental torture. The first letter which is undated starts with the first sentence, which shows volcanic discontentment agony in the mind of the girl as she says and accuses inlaws of her own parents that she has been left at the mercy and at the prey of the vultures who are giving her terrible torture and they are worse than beasts as they beat her every day. He some times ask me to sign divorce papers and when I refused to do so he threatened me with death and only yesterday he tried to strangulate me and said that she would be killed and he would go to jail. She was left only when she was told that on Bhaiya Dooj she must get Rs. 1001/-. The amount of Rs. 3000/- which you sent with Kailash Jain has been spent by them and they have been demanding more and more. She apprehended that unless she is taken away from the clutches she would be killed. The exact words are as under:

^^ iwT; firkth o ekrkth] lknj iz.kke Ik= vkidk ugh A vk'kk gS fd vki dq'kyiwoZd gksxas A vkus eq>s fdu nfjUnks dsk lkSi fn;k gS os eq>s cgqr nq[k nsrs gS esjs llqjky oky rks i'kqvks ls Hkh x;s chrs gS os jkst eq>s ekjrs gS A os dgrs gS ihgj ls :Ik;k yk ugh rks tku ls ekj M+kywxk o rsjh lkjh ikxy [kksy nawxk A rq>s tku ls ekj nwaxk o jkst eq>s ekjrs gS fd rykd ds isij ij lkbu djus es euk djrh gwaW rks os M+jkrs gS dy mUgksus esjk xyk nck fn;k dgrs fd eS tku ls ekj M+kywxk eS tsy tkus ls ugh Mjrk fQj NksM+ fn;k A o dgk fd HkS;k nwt ij 1001½ :Ik;s vkus pkfg, A ;s eq>s cgqr ihVrs gS fd ,sls fy[ktkSj dgrs gS fd rwus esjs lkFk ,slk fd;k oSlk fd;k o eq> o eq>ij >wBs vkjksi yxkrs gS A os fy[kus ij eq>s etcwj djrs gS ugh fy[kus ij eq>s ekjrs gS A, d fnu eSu fQj muds dgus ij rc fy[k fn;k tSlk os pkgrs Fks D;ksfd mUgksus dgk fd rw fy[k nsrh eS rq>s dHkh ugh ek:axk o rax d:xk A vc os eq>s cyssdesy djuk pkgrs gS A vkus tks 3000½ :Ik;s dSyk'k ds lkFk Hksts VsijsdMZ ds os mUgksus [kpZ dj fn;s vc dgrs gS vkSj :Ik;s yk A vki 'kh?kz vkdj eq>s ys tkbZ;s A ugh rks ;s eq>s nq[k nsxs ;k ekj Mkysxs A vkidk iq=h galk jkuh It is not necessary for me to repeat the second letter which only affirms the apprehensions and the serious fear of death as exhibited in the earlier letter. Undoubtedly this provides a darkest background and a black chapter in

the matrimonial life of a woman who wanted to release herself from the clutches of her husband.

31. Whether these letters are proved or not is a matter yet to be decided at the appropriate stage because Mr. Choudhary has challenged the genuineness of these letters, although Mr. Shishodia has pointed out that the entire letters are written in her own hands and they have been verified to be in her hand, after comparison of her handwriting in the Government office by Hand-writing expert.

32. Be that as it may, prima facie I am persuaded to consider them for the limited purpose of this bail application. Mr. Choudhary contended that the Riksha driver Ganpat Chauhan who has now stated that while she was being taken to the hospital she cried that "you have burnt me alive where do you want to take me now", has resiled from his statement by giving an affidavit. Even earlier in the first investigation he did not give this story. These are some serious puzzles which are to be solved by cross-examination.

33. During arguments it was revealed that a tape recorded statement of this witness was taken at the office or residence of the president of Riksha Union and in that he narrated why he gave a false statement in the first investigation exculpating Ashok Dhariwal and others. According to the counsel for the accused, the very fact that the witness Chouhan, driver was taken to the place of the president of the Union and there tape-recorded statement was recorded goes to show that effort was made to temper. Contrary to it the prosecutor's version is that earlier he was under threat and terror and he came out with the real story later on and now again if the affidavit has been procured that would show that the investigation is not being allowed to remain free and witnesses are being influenced and tempered by the accused party.

34. These two versions, divergent as they are, only adds to the complexities and seriousness of the case though one of them be true. The fact that witnesses are changing their versions is a very unfortunate feature but the fact that after the death of Hansa Rani and after the investigation having been given to Mr. Harisingh, Additional Superintendent of Police Crimes C.I.D. Jodhpur, evidence has been recorded showing prima facie case of murder of Hansa Rani and on the basis of which a standing warrant has been obtained by the police from a Magistrate for the arrest of Ashok Dhariwal, the husband of the deceased, goes to show that prima facie the accused Ashok Dhariwal is required face to further investigation and if necessary an inquiry or trial under Section 302 I.P.C which is punishable death with or imprisonment for life.

35. Mr. Choudhary pointed out that some of the witnesses like Kanhaiyalal and Dr. Chameli Patel have been consistent one and they have exculpated all the accused and have said that the deceased did not make any allegation of homicide. This may be true, but I cannot comment on it, at this stage as it will have to be seen whether Hansa was under terror or pressure of inlaws.

36. It has come in evidence during investigation that one of the relations of Ashok Dhariwal threatened the deceased Hansa Rani in the presence of Ganpat Chouhan that if she would disclose the real story then she will have to face direct consequences. The various features of this case have left an impression in my mind that great heat has been generated during investigation and serious

effort is being made. On account of that a situation has come where the witnesses who are supposed to unfold the truth and the real story are under serious handicaps of individual influences or tortures as revealed during investigation.

37. It is, therefore, in the interest of all concerned that the investigation should be completed with speed and in case, a case is made out the challan should be filed and it should be left to the Court to decide the guilt or innocence of the accused.

38. My attention was invited by the prosecution to one of my judgment in "Ashok Kumar Sharma and Ors. v. State of Rajasthan 1980 R..L.W. 267 wherein I have observed as under ':

Dowry hungry vultures, failed in getting T.V. Friezes, Scooter and coins of Rs. 25,000/- (price for selection as Tehsildar), started teasing, taunting insulting and creating intolerable torture, resulting in severe mental agony apathy for such disgraceful beastly life, and nervous breakdown of an innocent, beautiful educated yet helpless newly married girl, who was thus forced to commit suicide by burning herself alive such is the tragic, pathetic hairraising, heart breaking, nerve cracking, concious shocking and society rocking and line prosecution story of Urmila the deceased, and crime of abetment of suicide by husband Ashok Kumar and his dowry starving family members. Yet the prayer is for extraordinary, exceptional judicial favour of 'bail without jail' by the alleged 'dowry devils.

In the above case I have observed as under:

This Court would not like to make any comment on evidence one way or the other. Mr. Tibrewal's argument may ultimately be found to be correct or may be found to be wrong, but the least that can be said is that an advocate and 2 more persons have prima facie given evidence which found to be true not only but likely to prove fatal against accused on the factor that a constant demand and torture for dowry' as alleged have been made from an educated girl. The resultant repeated attempts for a suicide revolts against the social conscience and also makes it a 'serious social crime of heinous nature. It is not a stray case, as several Urmilas are becoming victims of 'dowry deaths' homicide or suicide, as correctly pointed out by prosecution. This is crime against society, against womanhood and above all against poverty. It deserves serious prompt attention by law makers, law interpreters and law enforcement machinary in addition to the special reformers. It is a 'slur' on society and 'stigma' on present generation. A social evil, taking away precious lives of newly married girls-rarely noticed deserves much more preventive stringent legislation.

The provisions regarding anticipatory bail under Section 438 Cr.P.C. were intended for us very strangely in the exceptional cases, where malafide design is patent and not even latent. Such provisions cannot be used for circumventing normal procedure of arrest and investigation after arrest. Unless the accused shows that he has strong case where arrest is sought to be made in false concocted case to defame and humiliate or

black mail him the anticipatory bail cannot be taken.

Urmila's case was a case of suicide and unfortunately the present one is an alleged case of homicide and the only tragic and pathetic common thing between the two is, alleged death on account of nonfulfilment of the dowry demand, which undoubtedly is a social crime.

39. Whatever I have said in Urmila's case applies with much more rigorous strength in the present case.

40. Since I am dealing only with a bail application at this stage I would like to stop here and would not go any further, lest it may prejudice the case of either parties. The least that can be said is that the accused in such a heinous case of this type would be well advised to assist the investigation, and not to avoid it by moving successive bail applications, and then face the trial if necessary. The repeated attempt to obtain anticipatory bail which according to my decision of Urmila's case is not a normal rule but an exception only results in inviting such situations where the Court is compelled to consider the entire matter though for a limited purpose of bail only.

41. Mr. Choudhary also submitted that it may be clarified that the observations made during the decision of the bail application should not prejudice the decision of case either during investigation or trial. As I was conscious of this, I have taken enough care to not to comment onto the evidence one way or the other. However, it is further made clear that the observations made during the decision of this case of bail matter would not result in any prejudice and neither the investigating agency nor the trial court should take them into consideration for weighing the evidence for the guilt or innocence of the accused.

42. The result of the above discussion is that I have got no hesitation in rejecting this bail application under Section 438Cr. P. C. on merits. The bail application therefore fails and is hereby dismissed.