

Dhanvinder Singh Vs. State

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Court : Delhi

Decided On : Jul-28-2014

Judge : Pradeep Nandrajog

Appellant : Dhanvinder Singh

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision: July 28, 2014 + CRL.APPEAL NO.885/2011 DHANVINDER SINGH Represented by: Appellant Mr.Jivesh Tiwari, Advocate versus STATE Represented by: Respondent Ms.Aashaa Tiwari, APP CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA PRADEEP NANDRAJOG, J.

1. Holding that the statement Ex.PW-8/C made by Sonia before her death to Sh.Pramod Kumar PW-8, SDM P.S.Patel Nagar was truthful and without a blemish and accepting the same as Sonias dying declaration the learned Additional Sessions Judge has convicted Dhanvinder Singh, husband of Sonia, for the offence punishable under Section 302 IPC. Holding further that the testimony of Mandeep Kaur, PW-1, Janak Singh PW-4 and Harish Kumar PW-13 was trustworthy, Dhanvinder Singh has been convicted for the offence punishable under Section 498-A IPC.

2. The verdict of guilt is as per decision dated March 11, 2011. Vide order on sentence dated March 16, 2011, Dhanvinder Singh has been sentenced to undergo imprisonment for life for the offence of murder and to undergo R.I. for three years for the offence punishable under Section 498-A IPC.

3. Dhanvinder questions the verdict of guilt urging that when Sonia made her statement Ex.PW-8/C she was not fit to make a statement and that no witness of the prosecution has spoken that the endorsement on Ex.PW22/B ostensibly recording that Sonia was fit for statement was made by any doctor. Neither the doctor concerned has been examined nor anybody familiar with the writing of the doctor concerned has been examined. Further, learned counsel urged that there is evidence of Sonias maternal uncles and the wife of one of them meeting Sonia before her statement was recorded and thus it is apparent that Sonia was pressurized to make the statement. Concerning Janak Singhs claim that through her mobile number 9953567155 Sonia spoke to him on his mobile number 9213404567, learned counsel urged that from the testimony of Manish Kumar Chugh PW-6, Nodal Officer of Tata Tele Services it was clear that mobile number 9213404567 was owned by one Brij Mohan Sharma. Thus, counsel urged that the learned Trial Judge wrongly opined that Sonias dying declaration Ex.PW-8/C was corroborated with evidence aliunde.

4. Dhanvinder Singh had brought his wife Sonia to Doctor Ram Manohar Lohia Hospital at 11.45 A.M. on April 21, 2008. She had suffered burn injuries and so had Dhanvinder Singh. Both were examined at the casualty of the hospital by Dr.Preeti Kharbanda PW-5, who prepared Dhanvinders MLC Ex.PW-5/A recording therein that Dhanvinder had burns on the right and left distal part of both hands and forearms as also near the knee joints and the thighs. Smell of kerosene could be detected. It was further recorded that as told by Dhanvinder he had suffered the burn injuries while trying to put a blanket over his wife who had caught fire due to sudden burst of stove. Sonias MLC Ex.PW-5/B records that her husband had brought her to the hospital. She had burns on the face, right and left upper limbs, front of chest, abdomen and thigh region. The burn injuries suffered by Sonia was recorded as result of sudden burst of stove at home. It was noted that smell of kerosene was detected.

5. But before that, at 11.24 A.M. H.C.Tara Chand who was on duty at P.S.Anand Parbat recorded DD No.16-A, Ex.PW-2/A, of information received from L/Ct.Prabha from the Police Control Room that a fire had been reported from house No.20, Road Baljeet Nagar. He handed over a copy of Ex.PW-2/A to SI Gyan Chand PW-7 for investigation who left the police station accompanied by Ct.Devender PW-2. The two reached house No.T-29, F-10/2, Baljeet Nagar, Bheel Basti and learnt that a lady had been burnt and her husband had taken her to some unknown hospital.

6. On Sonia being admitted in the casualty of RML Hospital, Ct.Satbir who was on duty at the hospital informed the duty officer P.S.Anand Parbat at 12.10 A.M. over the telephone that Sonia had been admitted at RML Hospital in a burnt condition by her husband. Said information was conveyed to SI Gyan Chand. He left Ct.Devender at the spot and went to RML Hospital. He found Sonia admitted in the emergency ward in a burnt condition and asked her how she got burnt. Sonia simply told him that she was married one and a half year ago. He informed the SHO of P.S.Anand Parbat at whose instance Pramod Kumar SDM P.S.Patel Nagar, PW-8, was contacted. Sh.Pramod Kumar reached the spot and met Janak Singh PW-4 and Harish Kumar PW-13, the maternal uncles of Sonia and recorded firstly statement Ex.PW-4/A of Janak Singh. CRL.A.No.885/2011 In his statement Janak Singh Page 3 of 13 informed that he was the maternal uncle (mama) of Sonia and was a TSR driver. He had brought up Sonia and got her married to Dhanvinder Singh who, at the time of marriage, had told them that he was an exporter. After three-four months of the marriage he started beating Sonia demanding money. He used to abuse Sonia. Last night at 1.30 he had received telephone call from Sonia who told him that her husband was beating her. She lamented as to where she was trapped. She begged him to take her away. She feared for her life. He informed that on the day of the incident at 11:15 A.M. Sonia rang him and informed that she had been burnt. He was at New Delhi Railway Station. He contacted his brother Harish over the telephone. Both first went to Anand Parbat and then to RML hospital. As directed by the SDM, FIR No.57/2008 for offences punishable under Section 307/498-A IPC was registered on April 21, 2008 at 9.20 P.M. at P.S.Anand Parbat. After recording Janaks statement Ex.PW-4/A Sh.Pramod Kumar recorded the statement Ex.PW-8/A of Harish Kumar who

also informed of Sonia being subjected to beating by her husband Dhanvinder Singh.

7. After the FIR was registered SI Gyan Chand returned to the house where Sonia suffered burn injuries. He summoned the crime team. SI Gulshan Kumar PW-10, Incharge Mobile Crime Team accompanied Ct.Rakesh Kumar PW-11, a photographer reached the house where Sonia was burnt. Ct.Rakesh Kumar PW-11 took 12 photographs Ex.P-1 to P-12, negatives whereof are Ex.P-13 to Ex.P-24 of the spot. S.I.Gulshan Kumar found broken pieces of glass bangles, some burnt and some unburnt matchsticks, a quarter glass bottle and burnt pieces of ladies suit and directed the IO to seize the same. He prepared the crime team report Ex.PW-10/A recording as aforesaid.

8. SI Gyan Chand picked up the burnt and unburnt matchsticks, burnt clothes, broken glass bangles and a quarter glass bottle from the spot and drew up the seizure memo Ex.PW-2/C which was witnessed by Ct.Devender PW-2.

9. From that stage SI Jatinder Kumar PW-22 took over the investigation. He reached the house where Sonia was burnt. By that time ASI Gyan Chand and the Crime Team had not completed the proceedings at the spot. S.I.Jatinder Kumar prepared the site plan without scale Ex.PW-22/A of the house where Sonia suffered the burn injuries and marked the spot A in a room where Sonia suffered the burn injuries and from where the burnt and unburnt matchsticks and burnt clothes as also a few pieces of broken glass bangles and the quarter glass bottle were seized.

10. The next day on April 22, 2008, Sh.Pramod Kumar went to RML hospital accompanied by SI Jatinder Kumar PW-22 who wrote the application Ex.PW-22/B to the Chief Medical Officer of RML hospital seeking permission to record the statement of Sonia. On his obtaining an endorsement on copy of the application Ex.PW-22/B at 12.30 P.M. that Sonia was fit for statement, Sh.Pramod Kumar recorded Sonias statement Ex.PW-8/B who informed that on April 20, 2008 she had a quarrel with her husband. He had beaten her. At 10.15 P.M. next morning her husband started drinking alcohol. She told him that she wanted to go to her uncles house. A verbal dialogue ensued. Suddenly her husband threw kerosene

oil on her. He threw two lit matchsticks at her. She did not catch fire. Her husband came near her and set her on fire. He then tried to douse the flames and as a result he also suffered burn injuries. Her husband went out. She told her uncle over the phone that she had got burnt. Her husband returned and took her to RML Hospital. Her husband used to quarrel with her nearly every day and used to physically assault her. Her mother-in-law Sharanjeet Kaur used to harass her and quarrel with her. In spite of her being pregnant, her mother-in-law used to quarrel with her regarding house hold work. When she was burnt only she and her husband were in the house.

11. Dhanvinder Singh was admitted at RML hospital for treatment of the burn injuries suffered by him. He was discharged on April 24, 2008 and was arrested.

12. Battling for life for a month and seven days, Sonia died on June 28, 2008 at the hospital. On receipt of information from the hospital at P.S.Anand Parbat recorded vide DD No.22-A, SI Desh Raj PW-19 accompanied by Ct.Balraj PW-18 went to the mortuary of RML hospital where Sonias dead body was identified by Janak PW-4 and Harish PW-13. Inquest papers were prepared. Body was sent for post mortem. Dr.B.N.Mishra, PW-20 conducted the post mortem and prepared the report Ex.PW-20/A recording that thermal burns covering 65-70% of the body had caused death due to septicaemia.

13. Offence punishable under Section 302 IPC was added in the FIR.

14. Since Sonia and her uncle Janak Singh PW-4 had informed in their statements that late night of April 20, 2008 Sonia had spoken to her uncle through her mobile phone No.9953567155 on Janaks mobile No.9213404567, S.I.Jatinder Singh collected call details from TATA Teleservices Ltd.

15. Site plan to scale Ex.PW-15/A was got prepared by the Investigating Officer from the Draftsman SI Mahesh Kumar PW-15 which depicts that the room where deceased Sonia suffered burn injuries and from where burnt clothes, some unburnt clothes, four burnt matchsticks and some live sticks, a match box as well as a quarter bottle made of glass were seized is opposite the kitchen and the spot has been marked A. It has a table on one side with a fridge and a bed on the

opposite side.

16. At the trial Dr.Preeti Kharbanda PW-5 proved Dhanvinders MLC Ex.PW-5/A and Sonias MLC Ex.PW-5/E. Sh.Pramod Kumar, SDM, Patel Nagar, PW-8 proved having recorded Sonias statement Ex.PW-8/C, Janak Singhs statement Ex.PW-4/A and Harish Kumars statement Ex.PW-8/A. S.I.Gyan Chand PW-7 and Ct.Devender PW-2 as also S.I.Gulshan Kumar PW-10 and Ct.Rakesh Kumar PW-11 proved photographs taken from the scene of crime, burnt and unburnt matchsticks, broken glass bangles and an empty quarter bottle of glass seized from the spot. S.I.Jatinder Kumar PW22 proved the site plan without scale Ex.PW-22/A drawn up by him. S.I.Jatinder Kumar proved the application Ex.PW-22/B submitted to the Chief Medical Officer for permission to record Sonias statement. Dr.B.N.Mishra, PW-20 proved the post mortem report of the deceased. Manish Kumar Chugh PW-5 proved the call details Ex.PW-6/E which evidenced that on the night preceding the incident a mobile call was made from mobile No.9953567155 to the mobile No.9213404567 and on the day of the incident a call was made at 11:13. He also proved Ex.PW-6/DA concerning the tower locations. As per his testimony mobile number 9213404567 was registered in the name of one Brij Mohan Sharma.

17. Mandeep Kaur PW-1 wife of Janak Singh, Janak Singh PW-4 and Harish Kumar PW-13, deposed that Sonia was brought up by Mandeep Kaur and Janak Singh since her parents were missing for the last ten years. She was got married to Dhanvinder on December 14, 2006. They used to regularly give cash to Sonia. Sonia used to complain that her husband Dhanvinder Singh used to beat her. On the intervening night of April 20 and 21, 2008 at 11:30 in the night Sonia had, over the mobile phone informed Dhanvinder that she was being beaten by her husband and that on April 21, 2008 she had informed Janak Singh at around 11:15 AM that she had been burnt.

18. Sonias statement Ex.PW-8/C, as claimed by the Sub-Divisional Magistrate, Sh.Pramod Kumar PW-8 and as ostensibly corroborated by SI Jatinder Kumar PW-22 was recorded on April 22, 2008. The application Ex.PW-22/B made to the Chief Medical Officer seeking his permission to record Sonias statement bears an

endorsement that at 12:30 PM Sonia was fit for statement, but who has made the endorsement has not been proved. The endorsement on the application has not been exhibited.

19. We are pained to highlight that the learned Public Prosecutor has remained highly negligent at the trial and the lapse to prove the endorsement has cast a cloud on the veracity of Ex.PW-8/C.

20. Since a statement which acquires the status of a dying declaration needs to be proved with purity, the consciousness and the fitness of the person who is battling for life when the stated dying declaration is made has to be proved with accuracy. But merely from the fact that the Public Prosecutor conducted the trial negligently would not mean that we have to throw out Ex.PW-8/C lock, stock and barrel. The rule of prudence and caution requires us to view the evidence carefully concerning the dying declaration.

21. We also have to take into account that Sonias maternal uncles PW-4 and PW-13 and her aunty PW-1 had met her at the hospital in the afternoon of April 21, 2008. There is a possibility that the three may have influenced Sonia. We also have to keep in mind that in Sonias MLC history of the burns suffered has been recorded as due to stove bursting when she was cooking. We also have to keep in mind that to SI Gyan Chand who was the first police officer to meet Sonia after she was burnt Sonia did not say that her husband had set her on fire. But we also have to keep in view the fact that Sonias husband was present in the emergency ward when the doctor examined Sonia and when SI Gyan Chand spoke to her.

22. Sonias statement has three factual aspects which are important. As we would be noting hereinafter, the same are corroborated by evidence aliunde. Firstly that on the intervening night of April 20 and 21, 2008 her husband had beaten her and she had made a call to her Mama. The second is that she made a call at around 11:15 AM after she was burnt to her Mama. The third is that her husband threw two lit matchsticks at her and since she did not catch fire, he came near her and set her on fire and then tried to douse the flames as a result suffering burn injuries. She does not state in her statement that she was cooking food.

23. Examined under Section 313 Cr.P.C., Dhanvinder has admitted that mobile number 9953567155 was of Sonia. He denied that mobile number 9213404567 was of Janak Singh. It is true that the latter mobile number has been proved to be registered in the name of one Brij Mohan Sharma, but it is not uncommon for people in India to sell their mobile phones with the chip. In her cross examination Mandeep Kaur has stated that said mobile number was of her husband. She has deposed that at 1:30 in the night Sonia had rung up her husband on the mobile phone and told him that her husband was beating her. Janak Singh PW-4 has also said so. Call record Ex.PW-6/E of the mobile number of Sonia 9953567155 shows that she made a call from said number at 1:31:11 hours on April 21, 2008 to mobile number 9213404567 and spoke for 103 seconds. One thing is clearly proved. That at an unearthly time (1:30 in the night) Sonia spoke to somebody for one minute and forty three seconds. The same record details Ex.PW-6/E shows that on April 21, 2008 at 11:13:37 hours from her mobile phone Sonia spoke for 22 seconds to the person possessing mobile phone number 9213404567. Ex.PW-6/DA showing Cell Site Ids with locations would reveal that the call made in the night was received through Base Transceiver Station i.e. Cell Phone Tower 6 DDO and 6 FA2, both of which are located at Shyam Nagar as per entries at serial No.610 and 636 in Ex.PW-6/DA. The map of Delhi shows that Shyam Nagar colony is adjacent to Vishnu Garden where Janak Singh and his wife Mandeep Kaur were residing at the time of the incident. Similarly we find that entry No.177 in Ex.PW-6/DA shows that when a call was received on the mobile number 9213404567 the Base Transceiver Station was number 4650 located near the New Delhi Railway Station. Janak Singhs statement that he received the call from Sonia when he was present at New Delhi Railway Station corroborates his version that though he was not the registered owner, he was the de facto owner of mobile number 9213404567. Thus, statement in Ex.PW-8/C by Sonia that she spoke twice to Janak Singh finds independent corroboration. We would be failing not to highlight that unless there is a grave emergency people do not usually ring up friends and relatives at 1:30 in the night. The call made at 1:30 in the night by Sonia shows that she was tormented to such an extent in her house that it became her compulsion to tell somebody close to her the said fact. The second corroboration we find to Sonias statement is from the testimony of the police

officers who went to the site that they picked up three burnt matchsticks from the place where Sonia was burnt. She has said in her statement that her husband threw two lit matchsticks at her but could not set her on fire and then came near her and lit the third matchstick to set her on fire. The seizure memo Ex.PW-2/C simply needs to be highlighted. The next corroboration we find is from the two site plans, the rough site plan Ex.PW-22/B and the site plan to scale Ex.PW-15/A. The same show that Sonia was burnt not in the kitchen but in a room opposite the kitchen.

24. As a matter of fact, the first dying declaration made by Sonia would be the statement made by her over the telephone to her maternal uncle Janak Singh PW-4 who has said that when he received a telephone call from Sonia at 11:15 AM on April 21, 2008 she had told him that her husband had set her on fire. We have discussed the evidence above to corroborate Janak Singh's statement that he received the telephone call from Sonia when he was at New Delhi Railway Station and that the two spoke through mobile telephones.

25. We thus have two dying declarations made by Sonia duly proved.

26. That apart, there is a very crucial piece of evidence which appears to have escaped the notice of the learned Trial Judge. The site plan proved and in respect of which there is no cross examination would show that Sonia was set on fire in the room opposite the kitchen and not the kitchen. Thus, Dhanvinder's version in his statement under Section 313 Cr.P.C. that his wife caught fire while cooking is false. That apart, the photographs Ex.P-1 to Ex.P-22 would show that the kitchen has a gas burner and a gas cylinder. In his statement under Section 313 Cr.P.C. Dhanvinder has stated that Sonia was preparing food on the stove as the gas cylinder had been finished one day prior, and we understand him to be saying that there was no gas in the cylinder for the last one day. But we find in the photograph Ex.P-4 that cooking utensils are on both the burners of the gas stove. It is clear that food had been cooked or Sonia had made preparations to cook the food on the burners of the stove, fuel whereof was gas.

27. We concur with the view taken by the learned Trial Judge that the prosecution has successfully established that Dhanvinder threw kerosene on Sonia when she

objected to his drinking at 11:00 in the morning. He then set her on fire. Suddenly it dawned on him as to what he had done. He then tried to douse the flame and in the process suffered burn injuries.

28. Dhanvinders conviction for the offence punishable under Section 302 is affirmed.

29. As regards Dhanvinders conviction for the offence punishable under Section 498A IPC we find that the conviction is not on account of cruelty concerning a dowry demand but is on account of the fact that he used to beat Sonia and treat her with such physical and mental cruelty that it reached the level of a wilful conduct of a nature as was likely to cause grave injury or danger to life, limb or health of the woman. No serious arguments were advanced that the testimony of PW-1, PW-4 and PW-13 as also Sonias dying declaration (if accepted) did not establish said fact.

30. The appeal is dismissed.

31. TCR be returned.

32. Since Dhanvinder is in jail two copies of the present decision shall be sent to the Superintendent Central Jail Tihar. One for his record and the other to be supplied to Dhanvinder. (PRADEEP NANDRAJOG) JUDGE (MUKTA GUPTA)
JUDGE JULY28 2014 skb/mamta

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