

Gopal Chand Vs. State

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Court : Delhi

Decided On : Aug-22-2014

Judge : Pradeep Nandrajog

Appellant : Gopal Chand

Respondent : State

Judgement :

\$~10 * IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision: August 22, 2014 + CRL.A. 48/2012 GOPAL CHAND Represented by: Appellant Mr.Bir Singh, Advocate versus STATE Represented by: Respondent Ms.Aashaa Tiwari, APP Insp.Narender Singh, P.S.Jyoti Nagar CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA PRADEEP NANDRAJOG, J.

(Oral) 1. Sangita was married to Krishan, the younger brother of Gopal Chand - the appellant. She and her husband were residing at the house of Gopal Chand who was pressurising the two to vacate the house. Gopal Chands wife had expired in the year 2004, there are traces of evidence that he was wanting Sangita to satisfy the needs of his body as well. Sangita suffered burn injuries in her house at around 9.30 P.M. DD No.28-A, Ex.PW-13/A was recorded at 10.05 P.M. on September 28, 2010 at P.S.Jyoti Nagar that an informant through mobile phone No.9811749420 had informed that a lady was on fire at gali No.4, Shiv Mandir. The caller was Dipak Goel PW-4 who was passing by the house in which Gopal

Chand, his younger brother and Sangita resided.

2. Before SI Shiv Raj Rawat PW-18 to whom DD No.28-A was entrusted for investigation reached the house where Sangita suffered burn injuries, the PCR van had reached and had removed Sangita to the hospital. HC Bhagmal Singh PW-15 was the incharge of PCR van B-27 and as deposed to by him on receiving information that a lady was burnt at gali No.4 Shiv Mandir, he reached the house and shifted the unfortunate lady to GTB hospital. As per him the lady told her name as Sangita and told him that her jeth Gopal Chand had burnt her. He said that Sangitas husband Krishan had also accompanied in the PCR van.

3. Taken to the casualty of Guru Teg Bahadur Hospital, Shahadara, Dr.Parmashwar PW-19 attended to Sangita and drew up the MLC Ex.PW19/A recording therein that he had examined Sangita at 10.55 P.M. on September 28, 2010. The patient had 90% burns on the body but was fit.

4. SI Shiv Raj Rawat PW-18 reached GTB hospital as he learnt that Sangita had been removed to the hospital by a PCR van. He recorded Sangitas statement Ex.PW-18/A as per which Gopal Chand was named by her as the one who set her on fire at 9.30 P.M. when her husband was not in the house. He made an endorsement Ex.PW-18/B beneath the statement and despatch the two at 12.15 mid-night, recording the date obviously as September 29, 2010 for FIR to be registered. At 12.30 past mid-night FIR No.417/2010 for an offence punishable under Section 307 IPC was registered and an entry to said effect was made in the DD register vide DD No.37-A, Ex.PW-6/B. Information was passed on to the Sub-Divisional Magistrate of the area, Sh.Vipin Garg who reached the hospital at 7.00 A.M. on September 29, 2010 and recorded Sangitas statement Ex.PW-1/A, in which she once again named Gopal Chand as the one who set her on fire.

5. SI Shiv Raj Rawat PW-18, after recording Sangitas statement Ex.PW-18/A returned to the spot and summoned the crime team officers.

6. SI E.S.Yadav PW-8 heading the crime team prepared the report Ex.PW-8/A. SI Shiv Raj Rawat lifted a match box Ex.PW-12/P-5, burnt clothes and matchsticks Ex.PW-12/P-3, burnt sandals Ex.PW-12/P-4, burnt skin Ex.PW-12/P-2 and a

plastic container Ex.PW-12/1 from which kerosene oil smell was detected by him. He recorded the seizures in the memo Ex.PW-12/A. Gopal Chand was arrested at 12.15 A.M.

7. Ct.Shyam Lal PW-9 of the crime team took eight photographs Ex.PW-9/A1 to Ex.PW-9/A8, negatives whereof are Ex.PW-9/B1 to Ex.PW9/B8.

8. Five days later Krishan Kumar submitted an application to Sh.Vipin Garg, Sub-Divisional Magistrate allegedly containing Sangitas thumb impression. The writing was as if dictated by Sangita in which it was written that her statement made to the SDM on September 29, 2010 was incorrect. Gopal Chand had not set her on fire. That she wanted to make another statement. Sh.Vipin Garg went to GTB hospital on October 05, 2010 and submitted the application mark P-1/A which he had received from Sangitas husband to the doctor on duty Dr.Prateek Vardhan in the burns ward who at point B recorded that Sangita was not fit for statement. Dr.Prateek Vardhan PW-2 has proved his writing on the application mark P-1/A as Ex.PW-2/A. Thus Sh.Vipin Garg could not record Sangitas statement on October 05, 2010.

9. As per FSL report Ex.PW-18/F kerosene was detected in the burnt pieces of clothes and burnt skin seized from the spot by SI Shiv Raj Rawat as also the plastic can/jar.

10. The battle for life fought by Sangita was lost by her. She expired on October 06, 2010. On said information being received by SI Shiv Raj Rawat he passed on the same to Insp.B.S.Ahlawat PW-16 who got the inquest proceedings conducted. Dr.Jutika Debbarma PW-7 conducted the post mortem and authored the report Ex.PW-7/A. Obviously she wrote that the cause of death was septicaemia as a result of infection due to ante mortem flame burns involving 90% of the total body surface.

11. The learned Trial Judge has vide impugned decision dated November 25, 2011 convicted Gopal Chand for the offence of murder. The conviction has been sustained believing Ex.PW-18/A and Ex.PW-1/A as the dying declarations made by Sangita.

12. The only issue which arises for consideration in the appeal is : whether testimony of HC Bhagmal Singh, SI Shiv Raj Rawat and Sh.Vipin Garg, PW-1 the Sub-Divisional Magistrate of the area inspire confidence for the reason each one of them claimed that Sangita made a dying declaration to them. We note that there is complete consistency in Sangitas dying declarations made to the three gentlemen.

13. No motive has been attributed, and indeed HC Bhagmal Singh could have none to falsely claim that Sangita had told him that her jeth Gopal Chand had set her on fire after pouring kerosene oil on her.

14. SI Shiv Raj Rawat would also have no motive to incorrectly and falsely record Ex.PW-18/A, Sangitas statement to him.

15. The contention to challenge the veracity of Ex.PW-18/A is that SI Shiv Raj Rawat did not obtain any certification from the doctor on duty that Sangita was fit for statement.

16. From the facts noted by us above it emerges that DD entry No.28-A was recorded at 10.05 P.M of a lady being burnt. HC Bhagmal Singh incharge of PCR van V-27 had removed Sangita to GTB hospital where she was examined by Dr.Pramashwar at 10.55 P.M. By the time Sangita was brought to GTB hospital SI Shiv Raj Rawat had already left the police station. He first proceeded to Sangitas house and therefrom to GTB hospital. The rukka containing Sangitas statement was despatched from the hospital at 12.15 mid-night. Sangitas statement Ex.pW-18/A and the rukka Ex.PW-18/B is three page writing and would take at least 45 minutes for anybody to write the same by hand. One can safely infer that SI Shiv Raj Rawat started recording Sangitas statement at around 11.30 P.M. if not earlier. The certification on Sangitas MLC that at 10.55 P.M. she was fit inspires confidence in the fact that when SI Shiv Raj Rawat met Sangita she was fit for statement. That apart, medical jurisprudence guides us that even a severely burnt patient remains fit for a couple of hours and loses consciousness when bilateral creps set in due to fluid loss from the body which deprives the body the salts and other amino acids in the body which are necessary for maintaining the right metabolism.

17. As regard Sangitas dying declaration Ex.PW-1/A recorded by the Sub-Divisional Magistrate, it may be true that the Magistrate has not taken the precaution to obtain a fitness certificate from the doctor in the burns ward qua Sangita being fit to make a statement, but we have no reason to doubt that Sh.Vipin Garg incorrectly recorded Sangitas statement Ex.pW1/A. No motive has been alleged to him. He is a disinterested person. In the decision reported as 2009 (4) JCC2585 Sukanti Moharana vs. State of Orissa, the Supreme Court had observed that mere absence of doctors certification as to the fitness of a declarants state of mind would not ipso facto render a dying declaration unacceptable.

18. Even if we were to ignore the dying declaration Ex.PW-1/A i.e. the third dying declaration made by Sangita, we still have her two first dying declarations, the first orally made to HC Bhagmal Singh and the second recorded in writing by SI Shiv Raj Rawat.

19. Before bringing the curtains down we may note that Arun Pandit PW- 3, Sangitas brother deposed that his sister had told him that her jeth Gopal Chand had tried to make physical relationship with her.

20. We find corroboration to the dying declarations made by Sangita from the photographs of the scene of the crime and the FSL report. Kerosene was thrown on her and she was set on fire. Gopal Chand has denied every incriminating circumstance put to him, but interestingly has stated that Sangita herself poured kerosene oil on her and set herself on fire because she and her husband wanted to grab his property. This means that Gopal Chand was present in the house to see how Sangita suffered burn injuries. If indeed, he saw Sangita set herself on fire, as her elder-brother-in law his instant reaction would be to douse the flames and rush Sangita to a hospital. He did not do so and this means that he did not see Sangita set herself on fire after pouring kerosene oil on herself. What happened to Sangita has been pen profile in Ex.PW-18/A. It was preceded by an oral dying declaration made to HC Bhagmal Singh.

21. The appeal is dismissed.

22. TCR be returned. (PRADEEP NANDRAJOG) JUDGE (MUKTA GUPTA)
JUDGE AUGUST22 2014 skb

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