

Mahendra Singh Vs. State of Bihar

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Court : Patna

Decided On : Mar-31-2003

Judge : Anil Kumar Sinha and Bal Krishna Jha, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Crl. Appeal (DB) No. 343 of 1998

Appellant : Mahendra Singh

Respondent : State of Bihar

Advocate for Def. : B.N. Gupta, APP

Advocate for Pet/Ap. : Sangeet Deokuliar and Sujeet Kumar, Advs.

Disposition : Appeal dismissed

Judgement :

A.K. Sinha, J.

1. The sole appellant, namely, Mahendra Singh has been convicted under Section 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life.

2. The prosecution story, as disclosed in the Fardbeyan-cum-dying declaration of the informant recorded by ASI Sheo Sagar Singh (PW 13) on 18.3.1995 at 9.15

a.m., is that the deceased, namely, Nayanpati Devi had given a sum of Rs. 1,600/- to the appellant six months ago. On 17.3.1995 at about 9.00 p.m. the appellant came to the house of the deceased who demanded her money which the appellant owned, where-upon, the appellant is alleged to have abused her and also thrashed her on the ground and thereafter the appellant poured kerosene oil on the body of the deceased from a 'Dhibri' and set fire. The deceased raised alarm on which the neighbours, namely, Dharohari Devi, Khalil Mian and others came and tried to extinguish the fire and seeing them the appellant fled away. The villagers informed the sister of the informant, namely, Asha Devi (PW 7) who brought the deceased to the Health Centre for treatment where PW 13 recorded her statement. Initially the police registered a case under Section 307 of the Indian Penal Code against the appellant but as the victim died after institution of the case, it was converted into 302 of the Indian Penal Code. After completing the investigation, the police submitted charge-sheet against the appellant under Section 302 of the IPC on the basis of which cognizance was taken and the case was committed to the Court of Sessions.

3. The appellant denied the charge and his defence is that he is innocent and has been falsely implicated in the case.

4. In order to bring home the charge, the prosecution examined as many as 14 witnesses out of whom PW 1 Nand Singh, PW 3, P.N. Mishra, PW 4 Khalil Ahmad, PW 5 Sunil Dubey, PW 7 Asha Devi, PW 9 Balram Sahni, PW 10 Gangjali Devi and PW 11 Rekha Devi turned hostile and PW 2 Mohan Mahto and PW 8 Ram Mati Devi were tendered for cross-examination. None of the aforesaid witnesses supported the prosecution story. PW 14 Rajan Kumar who is a formal witness has proved the post-mortem report (Ext. 5). The admitted position is that the Doctor who conducted the post-mortem examination has not been examined. However, it appears from the post-mortem report (Ext. 5) that the Doctor who conducted the post-mortem examination on the dead body of the deceased found the following ante-mortem injuries on her person:

Burn injury almost all over the body except upper half of the back and face. Epidermis peeled off from many parts of the body line of redness was found.

On dissection--Brain and meninges were congested. Mucosa of air passages were congested. Lungs and pleurae were congested. Heart chambers contained dark blood. Abdominal viscera were intact. Uterus was non-gravid. Stomach contained 2 ozs of juice.

Cause of death--Extensive burn-shock-death. Time elapsed since death within 24-36 hours.

5. The Trial Court has based the conviction solely on the dying declaration said to have been made by the deceased before the I.O. of the case as also before PW 12 Ashok Kumar, BDO of Har Sidhi Block who recorded the dying declaration of the deceased on 18.3.1995 at 10.30 a.m. on the requisition sent by I.O. of the case. As such, I would first of all deal with the evidence of PW 12 who had recorded the dying declaration of the deceased.

6. PW 12 Ashok Kumar has deposed that on getting requisition from the officer in-charge, he went to the Hospital along with a Karmchari, namely, Uma Kant Sharma and found Nayanpati Devi (deceased) in burnt condition. She was being treated by a Medical Officer of the Hospital. He has further deposed that he had talk with Nayanpati Devi who was in fit state of mind to understand things and on being asked she disclosed her name as also the name and address of her husband and thereafter the deceased narrated about the occurrence and on his dictation Uma Kant Sharma wrote the statement given by the deceased. PW 12 has categorically deposed that while narrating about the occurrence, the deceased had told that on 17.3.1995 at 8 to 9 p.m. Mahendra Singh came to her house and she demanded a sum of Rs. 1,600/- which she had given to him on which Mahendra Singh got enraged and poured kerosene oil on her body and set fire. She also stated that the occurrence was witnessed by neighbours Khalil Mian, wife of Akhamuna Das and wife of Kishun Das. PW 12 has further deposed that after recording the statement of the deceased he read over the contents to her and she affixed her LTI after understanding the contents. Besides her, Asha Devi had also affixed her LTI on it. He has further stated that in course of recording the statement, the Doctor Incharge of the Dispensary had gone to attend some serious patients in the hospital. In cross-examination PW12 has admitted that the

deceased had given her statement in Bhojpuri language and her condition was serious and at the time of recording the statement Asha Devi was present. He further admitted that he did not obtain any certificate from the Doctor on the statement recorded by him. He has also admitted that he did not obtain the signature of any Doctor or the staff of the hospital nor he obtained the signature of the writer of the statement, in question. He also admitted that the endorsement which reads as 'BEYAN PADHKAR GAWAHO KE SAMANE SUNAYA GAYA AUR SAHI PAKAR NISHAN LIYA GAYA' has been written in small letters and in different ink which only suggests that after recording the dying declaration of the deceased the aforesaid endorsement was made on his dictation which was in different ink. It has been suggested to this witness that he had not recorded any statement and that is why the Doctor did not put his signature. There is nothing else in the cross-examination of PW 12 which may suggest any ill-motive or any reason to fabricate the statement recorded by him. It may also be pointed out here that the Fardbeyan of the deceased was recorded by PW 13 on 18.3.1995 at 9.15 a.m. and PW 12 recorded the dying declaration of the deceased on the same day at 10.30 a.m. i.e. after one hour 15 minutes from the time of recording the Fardbeyan.

7. The next witness is PW 13 Sheo Sagar Singh, the I.O. of the case, who has East Cr.C-(2)-14 (HC) stated that he received an O.D. Slip from Dr. Muneshwar Prasad of Har Sidhi Hospital on the basis of which he made S.D. Entry No. 274/95 and proceeded to the Hospital where he found Nayanpati Devi in injured condition. The I.O. has deposed that the deceased was in a position to speak clearly and she gave her statement which was recorded by him. The statement was read over to the deceased and after hearing the contents she put her LTI on the Fardbeyan PW 13 has proved the Fardbeyan (Ext. 1) recorded by him on the basis of which FIR (Ext. 2) was lodged. PW 13 has further deposed that he sent requisition to the Circle Officer for recording dying declaration of the deceased. But, since he was not available, he wrote to the B.D.O. (PW 12) who recorded the dying declaration of the deceased. The I.O. visited the place of occurrence which is the house of the deceased. He has given detailed description of the place of occurrence. He stated that the house of the deceased is situated in the east of the road which goes to Chhapawa Chowk. The entry door is situated in the west of the

house which leads to a courtyard and there are two rooms in the east and west of the courtyard and he found the house-hold articles in those rooms. He also found a fire place situated towards the south of the courtyard and just beside that he noticed two 'Dekchis' in which cooked rice and meat were kept. PW 13 found a 'Jarkin' of two litres without handle from which the smell of kerosene oil was coming out and also found burnt cloths scattered there. PW 13 has stated that he seized Dekchis, Jarkin, etc. in the presence of two witnesses and it was told to him that the 'Dhibri' seized by him was used in the alleged burning of the deceased. The I.O. prepared inquest report (Ext. 4) which shows that he had found burn injury on the different parts of the body of the deceased. In cross-examination the I.O. has maintained to say that he had found 'Dhibri' in the courtyard and it was disclosed to him that fire was set in the courtyard itself. PW 13 has admitted that he had not obtained any certificate from the Doctor before the dying declaration of the deceased was recorded and has stated that the dying declaration was recorded at 10.30 a.m. and at that time the deceased was restless and was not in normal condition but she was quite conscious. He also stated that he could not get any eye-witness to the occurrence and he learnt in course of the investigation that the deceased was a kept of the appellant. The I.O. has proved the seizure list (Ext. 3) and has admitted that the articles seized by him in course of the investigation were not produced before the Court because the Malkhana Incharge was on leave.

8. The learned Counsel appearing for the appellant strongly argued before us that the dying declaration recorded by PW 12 was not admissible at all, as it does not bear the signature of the treating Doctor of the Hospital. It was also pointed out that the deceased had given her statement in Bhojpuri language but it was not recorded in that language, rather, it was recorded in Deonagari language. According to him these irregularities render the so called dying declaration (Ext. 6) as doubtful. It was next pointed out that not a single witness has come forward to support the prosecution case although many had witnessed the occurrence as per the statement in the Fardbeyan. As such, the so called dying declaration of the deceased has not been corroborated by the witnesses and this circumstance also renders the alleged dying declaration as doubtful.

9. It is true that no witness has come forward to support the case of the prosecution. According to the Fardbeyan when the alleged occurrence took place, meaning thereby, that when the altercation took place between the deceased and the appellant on which the appellant being enraged poured kerosene oil on the body of the deceased and set fire, nobody was present at that time. So, there was no eye-witness to the occurrence and the witnesses had rushed only when the informant (deceased) had raised alarm and the Fardbeyan discloses that the appellant had fled away seeing the arrival of the witnesses. The I.O. has also stated in his evidence that he could not get an eye-witness of the alleged occurrence. The attention of the I.O. was drawn regarding the statements made by the hostile witnesses and it would appear from the evidence of the I.O. also that no witness had claimed to be the eye-witness of the alleged occurrence who actually saw the appellant pouring kerosene oil on the body of the deceased or had witnessed the altercation and scuffle between the two. In such view of the matter the question of supporting the prosecution by any eye-witness does not arise. Even if the witnesses would not have turned volte face they would have given a hearsay account of the occurrence because none of them had seen the appellant when he poured kerosene oil on the body of the deceased.

10. So far the question that PW 12 did not record the dying declaration of the deceased in question and answer form, nor in the language of the deceased and the dying declaration (Ext. 6) does not bear the certification by the Doctor, it may be pointed out that there is no requirement of law that dying declaration recorded by a Magistrate must be attested by certificate of Doctor or certification by any hospital staff nor there is any statutory form for recording the dying declaration that it must be in question and answer form. A dying declaration can be oral or in writing and in any adequate method of communication whether by words or by signs or otherwise, provided the indication is positive and definite. Therefore, in our view the acceptability of the dying declaration recorded by the Magistrate or responsible Government Officer cannot be challenged on the ground that it is not in question and answer form and it does not bear the certificate of the Doctor or the hospital staff or that it was not written in the language in which the maker gave her statement. What is required is that the person recording the dying declaration must be satisfied that the deceased was in a fit state of mind to make the

statement and from the facts and circumstances of the present case it appears that the dying declaration is trustworthy. Acceptability of its genuineness cannot be doubted on the ground that it suffers due to absence of certain formalities like certification of the Doctor or that it should have been recorded in question and answer form. We are also of the firm view that the conviction of the appellant can safely be based on the dying declaration of the deceased, provided that it is trustworthy, even if the witnesses have turned hostile or did not support the prosecution case (the cases of *Laxman v. The State of Maharashtra*, reported in III (2002) CCR 247 (SC)=V (2002) SLT 49=2002 (3) PCCR 121 and *Bhola Turha v. the State of Bihar*, reported in I (1998) CCR 143 (SC)=II (1998) SLT 134=AIR 1998 SC 1515 : 1998 (1) East Cr.C. 618 (SC), were relied upon).

11. In the instant case we find that there are two dying declarations, inasmuch as the Fardbeyan of the deceased which was recorded on 18.3.1995 at 9.15 a.m. by the I.O. was also treated as a dying declaration of the deceased because she died on the same day at about 1.30 p.m. The second dying declaration was recorded by PW 12 Ashok Kumar, BDO of Har Sidhi Block to whom requisition was sent by the police for recording the statement of the deceased. So far the Fardbeyan (Ext. 1) which was also treated as dying declaration of the deceased, the learned Counsel for the State pointed out that when it was recorded it was not known that the deceased will die and was recorded as a complaint. Seeing the condition of the deceased the police sent requisition to the BDO who recorded the dying declaration of the deceased within one hour 15 minutes of the recording of the Fardbeyan. It was submitted that the defence has miserably failed to show any circumstance in the evidence of the I.O. or PW 12 which may show that they had any ulterior motive or any ill-will with the appellant which might have prompted them to fabricate dying declaration. On the contrary the I.O., on getting requisition from the hospital went there and recorded the statement of the deceased in usual course. Similarly PW 12 who is Gazetted Government Officer recorded the dying declaration of the deceased on the same day on getting requisition of the police in discharge of his official duty and there is no reason to doubt the veracity of dying declaration recorded by him. It has also pointed out that the prosecution story as painted in the Fardbeyan (Ext. 1) and the dying declaration (Ext. 6) recorded by PW 12 are corroborative to each other in sum and substance. The learned

Additional P.P. has submitted that the prosecution version further inspire confidence to believe because the I.O. visited the place of occurrence on 18.3.1995 itself and found the 'Dhibri' used in burning of the deceased besides pieces of burnt cloths from the courtyard. As such, the objective findings of the I.O. also support the prosecution version. We find much force in the submission advanced by the learned Additional P.P. appearing for the State.

12. After carefully scrutinising the evidence and considering the facts and circumstances of the case, we are of the firm view that there is no reason to doubt the veracity of the dying declaration (Ext. 6) recorded by PW 12 and we are also of the view that Fardbeyan (Ext. 1) recorded by the I.O. cannot be doubted and does not suffer with any vice. The prosecution story as painted in the Fardbeyan and the dying declaration recorded by PW 12 are corroborative to each other. So in this view of the matter also the Fardbeyan (Ext. 1) which was treated as dying declaration, as also, Exhibit 6 appears to be trustworthy and inspire confidence to believe. We are, therefore, of the view that the Trial Court was quite justified in convicting the appellant on the basis of the dying declarations made by deceased and the order of conviction and sentence recorded by him does not call for any interference. Accordingly, we affirm the order of conviction and sentence recorded by the Trial Court.

13. In the result, therefore, we do not find any merit in this appeal and, accordingly, it is dismissed. The appellant who is in jail custody will serve out the remaining period of the sentence.

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