

**Fulo Devi and ors. Vs. State of Bihar**

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**Court :** Patna

**Decided On :** Mar-10-1995

**Judge :** R.N. Prasad and Loknath Prasad, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 498A; [Evidence Act, 1872](#) - Sections 32

**Appeal No. :** Crl. Appeal No. 519 of 1990

**Appellant :** Fulo Devi and ors.

**Respondent :** State of Bihar

**Advocate for Def. :** Ram Briksha Singh Pahepuri, Adv.

**Advocate for Pet/Ap. :** Rana Pratap Singh, Renuka Sharma, Adv. No. 2 and Arvind Kumar Mishra, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**Loknath Prasad, J.**

1. This appeal is directed against the order of conviction recorded by 8th Additional Sessions Judge, Patna in Sessions Trial No. 959 of 1989 through which he found the appellants, Fulo Devi and Bindu Devi guilty under Section 302 of the

Indian Penal Code and convicted and sentenced them to undergo rigorous imprisonment for life and further all the four appellants including Fulo Devi and Bindu Devi were also found guilty under Section 498A of the Indian Penal Code and they were sentenced to undergo rigorous imprisonment for one year.

2. The facts in short giving rise to this appeal is that the deceased Sheela Devi was married with the appellant, Mohan Ram, sometime in the year 1978 and she was living in her matrimonial house. On 3.5.1989 at about 9 p.m. an alarm was raised by the deceased Sheela Devi which attracted the witnesses and they had seen her burning and they extinguished the fire. In the meantime a Police Party also arrived in a jeep and she was taken to Nalanda Medical College Hospital for treatment. In that very Hospital at about 11 p.m. or so the injured Sheela Devi gave her statement which was recorded by S.I., Sultanganj P.S. by way of fardbeyan in which she had stated that she was married with the appellant, Mohan Ram, and were living as husband and wife. On 3.5.1989 at about 9 p.m. when she was in her bed room her nanad i.e., the appellant, Fulo Devi, and her daughter, Bindu Devi, the other appellant, all of a sudden came and kerosene oil was poured on her body by Fulo Devi and her daughter, Bindu Devi set her on fire by lighting a match stick. On alarm raised by her the witnesses, who are mohalla people came and extinguished the fire and a Police Party also arrived in a jeep and she was taken to the Hospital. She has also stated regarding the cause of the occurrence i.e., the motive stating that through she was married in the year 1978 but unfortunately she could not deliver a child which caused annoyance to her husband, the mother-in-law and the other members of the family and she was subjected to cruelty and abuse and she was assaulted earlier for the same reason, and only for such reason she suspected that she was set on fire.

3. The Police after recording the fardbeyan got an F.I.R. instituted at the Police Station and while the injured was being treated in the Nalanda Medical College Hospital (to be referred to hereinafter only as hospital for brevity), she succumbed to the burn injuries on 5.5.1989 and after that an inquest was prepared and the dead body was subjected to the post- mortem examination. After investigation the Police submitted charge-sheet as against all the appellants. The Trial Court found the appellants guilty and convicted them in the manner indicated above but the

appellant, Lacchimini Devi, who is mother-in-law and Mohan Ram, the husband of the deceased, though charged under Sections 302/109 of the Indian Penal Code for abetment of the offence but they were not found guilty under this count for paucity of the evidence.

4. From the evidence on the record and it is admitted fact that the deceased was married with the appellant, Mohan Ram, some time in the year 1978 and they were living as husband and wife in a house constructed by the Government in Ambedkar Colony within Sultanganj Police Station and admittedly she had no issue from the wedlock. It is also more or less admitted fact that the deceased sustained burn injury in the night of 3.5.1989 and she was removed to the Hospital and she died on 5.5.1989. The prosecution has come with a case that she was done to death by in-laws in the manner indicated above. The defence version is otherwise that while she was cooking food in the house there was accidental fire and due to that she succumbed to the injuries in the Hospital. The question for consideration before us is if the deceased who admittedly died due to burn injuries sustained by fire by accident or she was set on fire and it is a case of homicidal death.

5. The prosecution, in the instant case, in order to bring home the guilt against the appellants basically relied upon the statements of the deceased prior to her death disclosing the cause or transactions leading to her death, in other words the dying-declaration and other supporting and circumstantial evidence. In the instant case the dying declaration is also in writing recorded by the Police Officer, Sri S.K. Srivastava and also oral dying declaration made in presence of the witnesses. So far as oral dying declaration is concerned, the prosecution could examine P.Ws. 1 to 4. P.Ws. 1 to 3 are own brothers of the deceased whereas P.Ws. 2 and 4 are close neighbours of the deceased.

6. P.W. 1, Mahendra Ram, has stated that he got his house in the same mohalla at a distance of about twenty yards or so. On 3.5.1989 at about 9 p.m. he was informed by a boy about the occurrence that her sister is burning and so he rushed to the house of his sister and found his sister i.e. the deceased extensively burnt and she was lying on a cot. She immediately disclosed that her Nanad i.e., the

appellant Fulo Devi poured kerosene oil on her body and her daughter Bindu Devi set fire on her by a match stick and then she raised alarm. It is also in evidence that immediately after that a Police Party came in a jeep and she was taken to the Hospital where she was treated and her statement was recorded and in course of treatment she succumbed to her injuries on 5.5.1989. Similar version was also given by P.W. 3, the another brother of the deceased, who too came to the P.O. house on getting information and on raising of the alarm.

7. The evidence of these two witnesses finds support from the evidence of P.Ws. 2 and 4, who are admittedly neighbours of the deceased and above all they are independent and above all they are independent witnesses. P.W. 2 has stated that the relevant time on 3.5.1989 he was in his house and he heard alarm of the deceased so he rushed to her house and found her burning. He alongwith others extinguished the fire and found smell of kerosene oil in the room and the lady also disclosed that she was subjected to burning. Similar is the statement of P.W. 4 but this witness has not stated that the lady has disclosed that she was set on fire and as such learned Counsel for the appellants vehemently assailed the evidence of P.Ws. 1 and 3 and it was contended that the statement of P.Ws. 1 and 3 are not to be relied upon to prove the dying-declaration implicating the appellants because P.W. 4 has not supported so far this portion of the story is concerned and P.W. 3 also has not specifically taken the name of the appellants to be the persons who set her on fire. P.W. 4 has specifically stated that he has gone to the place of occurrence on getting alarm and had found sprinkling of kerosene oil in the room and the lady was burning and he alongwith others extinguished the fire and the lady disclosed that she was set on fire and at that time the two appellants namely, FuloDevi and Bindu Devi were present in the room. Thus it is sufficient indication to show that the deceased was set on fire and kerosene oil was poured on her body and actually Fulo Devi and Bindu Devi are responsible for that. Admittedly, these two witnesses are neighbours. In that view of the matter it appears that though they might have heard the entire statement of the deceased, they were hesitating in taking the name of the appellants for the reasons that they were the neighbours.

8. Moreover, the prosecution case also finds support from the surrounding circumstances and the evidence of the other witnesses on the record. Admittedly from the statement of all the witnesses it can be said that the alarm was raised by the deceased herself and she was crying for help and kerosene oil was also found sprinkled in the bed room, which is also strong circumstance to show that she was set on fire and kerosene oil was used. Even the defence witnesses i.e. D.Ws. 1 and 2 had given a very inconsistent and different version. D.W. 1 has stated that long after the alleged occurrence he came to the Hospital and found the deceased in injured condition as she had sustained burn injury and he learnt from one Ramesh, who has not been examined, that the deceased sustained burn injuries while she was cooking; whereas D.W. 2 has stated that he had gone to the P.O. house on getting alarm and found the deceased burning and at that time Fulo was taking bath with the help of Bindu Devi and the deceased declared her intention to commit suicide. The whole statement of this witness appears to be baseless for the reason that if at all the deceased committed suicide or she sustained burn injuries while she was cooking then in that circumstance the family members i.e. the appellants are expected to rush to her and to extinguish the fire and to raise alarm for help. On the other hand the evidence on the record including the evidence of D.Ws. are basically contradictory and all of them have admitted that it is the deceased who raised alarm for saving her life and the appellants though present in the house had not raised alarm and they were silent spectators. Actually, the witnesses extinguished the fire and not the family members. Moreover, the witnesses including the Investigating Officer, who visited the place of occurrence immediately after the occurrence found smell of kerosene oil in the entire bed room and the Investigating Officer also found blackening mark in the wall. From the evidence of Investigating Officer it can be said that the attempt was made to destroy the evidence by cleaning the room. This is also a strong circumstance to show that the appellants actually set on fire the deceased and tried to destroy the circumstantial evidence which was in the room.

9. The prosecution case further finds support from the circumstances and other material evidence on the record. One of the strong circumstances against the appellants is that the deceased lady appears to be not in a mood to implicate all including her husband and mother-in-law rather she appears to be truthful and had

only stated that her Nanad and her daughter poured kerosene oil and set her on fire and she has simply stated that her husband and mother-in-law, i.e. the other appellants used to assault and abuse her only for the reason that though she was married in the year 1978 but she could not deliver a child and that was the cause of annoyance. So only on the point of cruelty the deceased has stated as against her husband and mother-in-law and her dying declaration also finds support from the evidence of P.W.I. The prosecution case also finds support from the evidence of the Doctor, who has figured as P.W. 7 and held post-mortem examination on 5.5.1989. The Doctor found burn injury throughout the chest, face, abdomen and other vital parts of the body and the opinion of the Doctor was that all these burn injuries were ante-mortem and caused the death of the deceased. So the evidence of the Doctor also supports the prosecution case that the deceased was done to death by setting her on fire.

10. The prosecution has also relied upon the other type of dying-declaration i.e. the dying-declaration recorded in writing which is Ext. 1. This fardbeyan was recorded in the Hospital immediately after she was admitted in the Hospital that very night at about 11 p.m. and the deceased had given a vivid description about the cause of the death and the various circumstances. It was contended on behalf of the appellants that actually Ext. 1, so called dying-declaration, is not admissible and it is also not free from doubt for a reason that the author of Ext. 1, Sri S.K. Srivastava, has not been examined and this has been simply proved by the Investigating Officer i.e. P.W. 6. Moreover the other Doctor who examined the injured after her admission in the Hospital was not examined to show that the injured was conscious or in normal condition to speak or to narrate about the incident and non-examination of the author and the Doctor about the mental condition and health of the deceased is definitely fatal and in support of his contention learned Counsel for the appellants relied upon an authority of our own High Court reported in 1990 (1) P.L.J.R. 378 in which a Division Bench of this Court observed that as the Magistrate, who recorded the dying-declaration, could not be examined, so the Court below was justified in not relying upon this written dying declaration.

11. Section 32 of the Evidence Act deals with dying declaration and admittedly it is an exception to the general rule that hearsay evidence is not accepted and best evidence must always be adduced. Such statements are admitted on the principle of necessity for the reason that the persons whose statement is offered is either dead or not available and no better evidence can be had in such situation. Their admissibility rests on the principle that sense of impending death produces in a man's mind the same feeling as that of conscientious and virtuous man and not likely to implicate innocent person. It is expected from a man, who is under acute agony and hope of this world is gone for him and so naturally this implies that he will disclose the truth at that moment and for such reason dying- declaration, if believed, is a good substantive evidence and on that basis conviction can be recorded without any corroboration. As the maker is not available for conventional test of cross-examination then such dying-declaration must be closely scrutinised as to its truthfulness like any other important piece of evidence in the light of surrounding circumstances and facts of the case bearing in mind on the one hand that the statement is by a person who has not been examined in Court on oath and on the other hand that a dying man is normally not likely to implicate an innocent person falsely. Further more, it is the duty of the Court to examine that actually the dying declaration was made conscientiously and voluntarily with normal understanding. This test was laid down by the Supreme Court in the case of Lallubhai Devchand and Ors. v. The State of Gujarat, reported in A.I.R. 1972 S.C. 1776.

12. So in view of the authority cited above and the provision of Section 32 of the Evidence Act it can be said that dying declaration can be oral and also documentary and it is not mandatory regarding admissibility of the dying-declaration that the author should be examined and non-examination of the author in any view of the matter will be fatal in nature and each case depends upon its own merit. Certainly the rule of prudence requires that the author i.e. the man who recorded the dying-declaration should be examined to enable the Court to know that the maker was conscious and was in healthy mind and gave the dying declaration voluntarily, without any prejudice or bias. In the instant case Sri S.K. Srivastava, Sub-Inspector of Police attached to Sultanganj P.S. recorded the fardbeyan of the deceased in the Hospital i.e. Ext. 1, which is dying-declaration,

but somehow or the other he could not be examined in the Court below and this dying-declaration was proved by the Investigating Officer, who has figured as P.W. 6 and it was admitted in evidence in the Court below without any objection from the appellant's side.

13. The examination of the author is necessary mainly for the reason that actually the deceased himself made dying-declaration the too voluntarily as mentioned above. In the instant case, no doubt, the author could not be examined but P.W. 3, who was present in the Hospital and in whose presence the dying declaration was recorded, has stated that the deceased made statement to the Police in his presence and at that time he was fully conscious and was mentally fit. Even the other witnesses have also stated that the deceased was fully conscious and was in a position to speak and she gave statement to the Police. D.W. 2, the own witness of the appellant also admitted in his cross-examination that the deceased was fully conscious and she was speaking to others. Above all, the Investigating Officer, who has figured as P.W. 6, has stated that immediately after the institution of the case he came to the Hospital and at that time the Doctor said that the deceased was sleeping as she was administered some heavy dose of medicine and subsequently again he recorded the subsequent statement of the deceased. Admittedly, the deceased died on 5.5.1989. So the evidence, as discussed above, clearly indicates that the deceased was fully conscious and she was in good mental condition to speak and make dying declaration leading to the circumstances of her death.

14. Moreover, if the truthfulness of the dying declaration is to be tested from the surrounding circumstances then it can be said that the deceased is own wife of one of the appellants and close relation to the others and she married with the appellant, Mohan Ram, in the year 1978 and earlier she had not any complaint of harassment against the in-laws rather she tolerated the miseries and also abuses and assault given to her from time to time without any protest. The contents of the dying-declaration also indicate that she had not implicated her husband or mother-in-law so far her case of death is concerned rather she had only stated about her Nanad and her daughter. This is a strong circumstance to show that the deceased gave the statement voluntarily and without any bias or prejudices and it is not

expected from an illiterate lady that too from the wife of one of the appellants to give a false statement that too against her close relations when she was in great agony and under the solemn sense of impending death and she had no feeling of revenge. So even though the Doctor, who first of all attended the injured could not be examined and also the author of the dying-declaration could not be examined still in the facts and circumstances of the case and by cogent evidence the prosecution has been able to bring on the record that the deceased also made a dying declaration in the Hospital which was recorded by Sri S.K. Srivastava i.e., Ext. 1 and this dying declaration was voluntary and was given when she was in sense and free from any feeling of revenge or prejudices.

15. Even if we discard the Ext. 1, the dying-declaration recorded by Sub- Inspector of Police only on the ground of non-examination of the author, then still there is sufficient evidence, as discussed above, that the deceased also made oral dying declaration before P.Ws. 1 to 3 earlier immediately after she sustained burn injury in her house and that dying declaration finds support from the finding of the Investigation Officer and the other surrounding circumstances. So on the basis of even the oral dying declaration the Trial Court is justified in recording the order of conviction as against all these appellants.

16. So from the evidence on the record, as discussed above, this fact is well proved that the appellants Fulo Devi and Bindu Devi in furtherance of their common intention committed murder of the deceased by setting her on fire by pouring kerosene oil on 3.5.1989 in the residential house of the deceased, as such both the appellants are definitely guilty under Sections 302/34 of the Indian Penal Code. The Trial Court was justified in convicting and sentencing these two appellants under this count and it does not require any interference. The evidence on the record also clearly shows that the other appellants i.e., Lachhminia Devi @ Chandia Devi and Mohan Ram used to abuse and assault the deceased, because she unfortunately could not deliver a child after a long marital life and for that reason she was subjected to cruelty so that either she may commit suicide or leave the house so that Mohan Ram gets an opportunity to remarry and for that reason alone her murder was committed by other two female appellants. So far the appellant Lachminia Devi @ Chandia Devi and Mohan Ram are concerned

they were simply found guilty under Section 498A of the Indian Penal Code and they were sentenced to rigorous imprisonment for one year but it appears that Mohan Ram remained in custody for more than a year during the trial. Similarly Lachhminia Devi @ Chandia Devi, who is an old lady remained in custody for three months during the trial and as such no further sentence is awarded and the period of imprisonment already undergone by these two appellants will meet the ends of justice.

17. In the result, the appeal is dismissed as against the appellants, Fulo Devi and Bindu Devi and dismissed with modification in sentence as against the appellants Lachhminia Devi @ Chandia Devi and Mohan Ram in the manner indicated above. The bail bonds of Fulo Devi and Bindu Devi are hereby cancelled and the Trial Court will take steps for their apprehension for undergoing the remaining portion of the period of imprisonment awarded by the Court below.

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