

**Krishna Chandra Vs. the State**

**Krishna Chandra Vs. the State**

**SooperKanoon Citation :** [sooperkanoon.com/484897](http://sooperkanoon.com/484897)

**Court :** Allahabad

**Decided On :** Nov-29-1995

**Reported in :** 1996CriLJ1507

**Judge :** D.K. Trivedi and ;O.P. Pradhan, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 302, 304B, 307 and 498A

**Appeal No. :** Criminal Appeal No. 309 of 1989

**Appellant :** Krishna Chandra

**Respondent :** The State

**Advocate for Def. :** I. Murtaza, G.A.

**Advocate for Pet/Ap. :** Sandeep Mukherji, ;Tegh Bahadur Srivastava, ;G.K. Mehrotra, ;C.B. Pandey and ;H.C. Awasthi, Advs.

**Disposition :** Appeal allowed

**Judgement :**

**O.P. Pradhan, J.**

1. Krishna Chandra and his mother, Smt. Chandra Kala, residents of village Bargaon, Police-Station Kotwali Nagar, Gonda were placed on trial before the Special/Addl. Sessions Judge, Gonda in connection with charges under Sections

304-B, I.P.C. and 498-A, I.P.C. as also under Section 302 read with Section. 34 I.P.C, for the murder of Smt. Indra Kumari in the intervening night of 19/ 20-7-1987. The learned Addl. Sessions Judge by means of his judgment and order dated 3 I-3-1989, acquitted both of them on the charge Under Section. 304-B, I.P.C, but convicted them Under Section. 498-A, I.P.C and sentenced each of them to undergo one year's R. I., and pay a fine of Rs. 500/- and in default to undergo six months R.I. Both of them were also convicted Under Section 302 read with Section 34, I. P.C., and sentenced to undergo life imprisonment. However, the sentences were made to run concurrently. Against their conviction and sentence, Krishna Chandra and Smt. Chandra Kala preferred appeals separately. Both these appeals have been heard together and since they arise out of the same judgment and order, they are being disposed of by a common judgment.

2. Briefly stated, the case for prosecution, as unfolded during trial is as follows: Smt. Indra Kumari (deceased) was the daughter of Babu Lal P.W.2 and she was married to appellant Krishna Chandra in the year 1980. At the time of marriage, appellant Krishna Chandra was studying in High School while he had joined LL.B. classes near about the incident. In the month of February, 1987 Indra Kumari had visited her parents house and she had told them that the appellants were demanding a motor-cycle and in case it was not delivered, they would leave her. Babu Lal visited the in-laws' house of his daughter, Indra Kumari on 16-7-87 and his daughter again told him that appellants were demanding motor-cycle. Babu Lal told the appellants that he was not in a position to provide motor-cycle. In the morning of 20-7-87, Bhagwati and Radhey Shyam went to the house of Babu Lal and told him that his daughter got burnt and admitted in the hospital. Thereupon Babu Lal and his son, Chandrika Prasad went to the hospital and found Indra Kumari severely burnt. On enquiry she told them that the appellants had beaten her and set her on fire after sprinkling kerosene oil, on the score of motor-cycle. She further told them that the Magistrate had recorded her statement. Babu Lal prepared a written report and lodged the same at P. S. Kotwali Nagar, district Gonda at 11.05 a.m. on the very same day. A case under Sections 498-A and 307, I.P.C was registered on the basis of the written-repott against the appellants and investigation followed. Indra Kumari, however, succumbed to the burn injuries at 3.30 p.m. on 20-7-1987. The crime was altered to one Under Sections. 304-B

and 498-A, I. P.C After completing the investigation, a charge-sheet for prosecution of the appellants under Section 304-B and 498-A, I.P.C was submitted by the Investigating Officer. The case was committed to the Court of Session by Chief Judicial Magistrate, Gonda on 9-2- 1988. Learned Addl. Sessions Judge framed charges against the appellants under Sections 304-B and 498-A, I. P.C. and also framed a charge under Section 302 read with Section 34, I.P.C, against both of them. The appellants pleaded not guilty to the charges and claimed trial.

3. In support of its case, the prosecution in all examined thirteen witnesses. Munna Lal, P.W. 1 is a neighbour of appellant Krishna Chandra. He did not support the prosecution case but he was not declared hostile.

Babu Lal P.W. 2 is the complainant of the case and father of deceased Indra Kumari. He supported the prosecution case and proved the written-report Ext. Ka-1.

Chandrika Prasad P.W.3 is the son of the complainant and brother of the deceased. He also supported the prosecution case.

Dr. S. N. Leley P.W.4 examined the deceased at 4.30 a.m. after she was admitted in the hospital with burn injuries. He found superficial to deep burn injuries all over the body of the victim except scalp and soles of both feet. She was in unconscious condition and her pulse and blood pressure were not recordable. She was put under treatment in the Emergency Ward. He proved the bed-head ticket Ext. Ka-3.

Dr. K. K. Chakrawarti P.W.5 conducted the autopsy on the deadbody of Indra Kumari at 3.50 p.m. on 21 -7-1987. According to him. Indra Kumari died due to shock as a result of ante-mortem burns. He proved the post-mortem examination report Ext. Ka-4.

Head Constable Gauri Shanker Yadav P.W.6 was examined to prove Chik report prepared on the basis of written-report of Babu Lal and registration of crime in the General Diary.

Head Constable Kaushal Kishore Mishra P.W. 7 was examined to prove alteration of crime from Sections 307 and 498-A I.P.C. to Sections 304-B and 498-A, I.P.C,

on the basis of intimation of death of Indra Kumari at 3.30 p.m.

Constable Phool Chandra Shukla P.W.8 was examined to say that he had carried the deadbody of Indra Kumari in a sealed condition to the mortuary for post-mortem examination.

Dr. B. P. Srivastava P.W. 9 was examined to say that he had certified, before the dying declaration of Indra Kumari was recorded by the Magistrate on 20-7-1987 at 8.50 a.m. that she was fully conscious and fit to make a dying declaration.

S.I. Dhannanjai Singh P.W. 10 was examined to prove the initial investigation done in the case.

Sri Sheo Shanker Srivastava P.W. 11 was posted as Naib-Tehsildar, Gonda and was Executive Magistrate III Class. He was examined to prove the dying declaration of Indra Kumari, Ext. Ka-11. According to him, he had recorded the dying declaration after the doctor had certified that she was in a fit state condition of mind to give her statement.

S.S.I. Sri R. S. Bhagat P.W. 12 was examined to prove the various steps taken by the Investigating Officer, I.P. Chandra, Circle Officer. In fact, his evidence regarding the investigation made by the Circle Officer, I. P. Chandra is of no use particularly when I. P. Chandra turned up to give his own evidence.

Sri. I. P. Chandra P.W. 13 was the Circle Officer in district Gonda during the material period. He carried out the investigation of this case and proved the various steps taken by him during investigation. He submitted the charge-sheet Ext. Ka-14 for the prosecution of the appellants.

4. The appellants denied that they had set on fire Indra Kumari after sprinkling kerosene oil on her. According to them, Indra Kumari had gone to ease herself in the night and her Sari caught fire from the Dhebri carried by her and she got burnt. She was admitted to hospital for treatment. According to them the complainant Babu Lal who was a peon at Tahsil, got a fictitious dying declaration recorded through Naib-Tahsildar. They denied that any demand for motor-cycle was ever made by them.

In defence, the appellants examined Dr. J. P. Pandey D.W.I to say that he had examined Indra Kumari at 6 a.m. on 20-7-87 in the Emergency Ward where she was admitted. According to him, her pulse and blood pressure were not recordable and she was in a sedated condition. He proved his endorsement on the bed head ticket as per Ext. Kha- 1.

5. On a consideration of evidence and circumstances-brought on record, the learned Addl. sessions Judge found the charge under Section 304-B I.P.C. not made out but found both the appellants guilty under Sections 498-A and 302/34 I.P.C. and sentenced each of them as already indicated at the outset. Each of the two appellants has challenged the conviction and sentence by means of separate appeals.

6. We have heard the learned counsel for the appellants and also learned Addl. Government Advocate, Sri Anadi Banerji and perused the material on record. There is no dispute that Smt. Indra Kumari died of burns. According to the prosecution, her death was homicidal but according to the defence, it was accidental inasmuch as Indra Kumari got burnt because her Sari caught fire from the Dhebri carried by her while she had gone to ease herself in the night. Therefore, it has to be determined whether it is a case of homicidal death or accidental death, it is no longer in dispute that the case is not covered under Section 304-B I.P.C., since the death took place after seven years of marriage.

7. The sheet-anchor of prosecution case is the dying declaration of Indra Kumari as recorded by Sri Sheo Kumar Srivastava P.W. 11 as per Ex. K,a-11. It is well settled that dying declaration can form the sole basis of the conviction provided that it is free from infirmities and satisfies various tests (voluntary, reliable and made in fit state of mind). In the case of I. Bolum Bhaskara Rao v. State of A.P., reported in 1985 Cr LJ 32 (AP) it was laid down by a Division Bench comprising of Hon. Jeevan Reddy and K. Ramaswamy JJ. both of whom are now adorning the Supreme Court's Bench, after analysing the different decisions of the Apex Court as under:

'1. The Magistrate must be satisfied that the dying man was making a conscious and voluntary statement with normal understanding :

2. It is incumbent upon the Magistrate who records the declaration to put a question regarding the mental, state of the declarant. It is salutary to mention that there is no opportunity to the accused to test the veracity of the statement by cross-examining and they are denuded of that right. Under these circumstances, a solemn duty is cast on the Magistrate recording the declaration to take all the precautions to find out the state of mind of the person making the declaration. But the omission thereof does not by itself constitute any infirmity regarding the reliability of the declaration made unless there are attendant circumstances to show that the declaration is not reliable and it is not voluntary or truthful.

3. It is the duty of the court to carefully scrutinize the declaration and find out whether it is truthful and reliable. The certificate appended by the Doctor that the deceased was in a fit state of mind, though has a great material bearing is not by itself conclusive. The Court can go into the evidence and find out whether the deceased was in a fit state of mind at the time of recording his statement. It has to be assessed from the questions put and the way in which the deceased gave answers, the seriousness of the injuries sustained and the situs at which the injuries were inflicted and the surrounding circumstances.'

8. Keeping these principles in mind, let us consider the evidence on record regarding the aforesaid dying declaration. Sheo Kumar Srivastava P.W. 11 who recorded the dying declaration Ext. Ka-11 stated in Court that he had enquired from the Doctor on emergency duty about the mental fitness of the patient and the doctor had given a certificate on the paper saying that she is fully conscious and is able to give dying declaration. He then proceeded to record the dying declaration of Indra Kumari. According to his evidence, he put questions to her and recorded her answers in her own words. However, the questions put by him to Indra Kumari were not reduced to writing. The answers given have been recorded in a narrative form. There is nothing on record to indicate that he put a question regarding the mental state of the declarant, namely, Indra Kumari. It was his bounden duty to satisfy himself before recording the dying declaration of Indra Kumari that she was in a fit mental state. It was not enough if the doctor on emergency duty had certified that she was fully conscious and was able to make a dying declaration. He could satisfy himself by putting questions to Indra Kumari in order to ascertain

if she was really in a fit mental state. Dr. B. P. Srivastava P.W.9 who was on emergency duty at the material time stated that he had examined the patient who was fully conscious and in a position to make statement. However, he did not record any particulars or date regarding the examination made by him on the Bed Head Ticket wherein he simply made an endorsement at the foot-end to the effect, 'D/D recorded at 8.50 a.m./20-7-87' and signed and dated the same. It is clear from his statement that the condition of the patient was serious at 6 a.m. as also at 9.15 a.m. on that date and further that it had not improved in between and therefore he did not make a note about her condition in the Bed Head Ticket. He further explained that the Magistrate had also not asked him to give a certificate about the mental state of the patient. According to his own showing, this patient was not under his charge, even though he was on emergency duty from 8 a.m. on that day. In the fact and circumstances, mere 'ipse dixit' of Dr. B. P. Srivastava P.W.9 that the patient was fully conscious and able to give dying declaration was not enough for the satisfaction of Sheo Kumar Sri vastava P.W. 11 that Indra Kumari was in a fit mental state to make a dying declaration. Apart from getting the certificate from Dr. B. P. Srivastava P.W.9. Sheo Kumar Srivastava P.W. 11 did precious little to satisfy himself about the fit mental state of Indra Kumari before proceeding to record her dying declaration.

9. We proceed now to examine the attendant circumstances with a view of find if the dying declaration made by Indra Kumari is reliable and truthful. It would be apt to extract hereunder the dying declaration made by Indra Kumuri:

^Jherh nUnzk nsOh iRuh'.k pUnz] vk;q yxHkx 21 o'kZ] fuoklh cMxkao] xks.Mk us rF; C;ku fd;kfd esjs 'kkSgj us eq>s dy jkr esa ekjk rFkk esjh lkl pUnzdyk nsOh us eq>styk fn;k A esjs 'kkSgj eksVj lkbfdy dh ekx dj jgs Fks vkSj tc esjs firk useksVj lkbfdy ugha fn;k rks vkt jkr esa eq>s tyk fn;k A tykus es esjs ifr'.k pUnz] lkl pUnzdyk] ,oa ,d uun jgh A dy jkr esa 8 cts ds ckn ls esjsifr rFkk lkl ,oa uun us ekjuk izkjaHk fd;k vkSj blds ckn jke es gh 12 cts dsyxHkx feV~Vh dk rsy MkYdj eq>s tyk fn;k A\*\*

A scrutiny of this dying declaration would indicate that India Devi did not give coherent and consistent statement regarding the roles played by her husband and

mother-in-law who are the appellants before us. On the other hand, it appears that she made the statement under a State of hallucination and confusion. To begin with, she assigned the role of Marpeet to her husband and the role of burning to her mother-in-law. However, a little afterwards, she turned somersault and stated that her husband set her on fire since her father could not meet the demand of motor-cycle made by him. She then added that her husband Krishna Chand, her mother-in-law, Chandra Kala and her sister-in-law (Nanad) had beaten her and set her ablaze after pouring kerosene oil on her at about 12 o'clock in the night. It may be pointed out that during investigation the sister-in-law referred to in this dying declaration was found to be about nine years old. She was also not charge-sheeted by the Investigating Agency.

10. It is also in evidence on record that Indrakumari was carried to the hospital the very same night by her husband, Krishna Chand and father-in-law, Lakshmi Narain and admitted there. Her Bed Head Ticket Ext. Ka-3 also indicates that she was brought by her husband, Krishna Chand. At the time of her admission at 4.30 a.m. she was examined by Dr. S. N. Leley P.W.4 who found her general condition very very low and she was unconscious. Not only this her pulse and blood pressure were not recordable. The rate of respiration was 20 per minute. Dr. Leley stated during his cross-examination that the condition of this patient was very serious and the brain does not work normally in the cases where blood pressure and pulse are not recordable. He further opined that dying declaration cannot be recorded in the case of patient whose brain is not working in a normal condition. Dr. Leley attended to this patient, namely, Indra Kumari till 8 a.m. on 20-7-87 because he was on duty till 8 a.m. on that day. Dr. Leley had however referred the case to Surgeon after admitting this patient.

11. The Surgeon on duty was Dr. J. P. Pandey D.W. 1. He examined this patient at 6. a.m. on 20-7- 87 in the Emergency Ward and found her in sedated condition. According to him, her blood pressure and pulse were not recordable and it was a case of 100% burns all over the body. He prescribed the treatment as noted in the Bed Head Ticket Ext. Ka-3. Dr. Pandey again examined this patient at 9.15 a.m. on the very same day and found her general condition the same, i.e. the pulse and blood pressure were not recordable. He made an endorsement to this effect on the

;Bed Head Ticket as per Ext. Kha-1. It, therefore, follows that overall condition of the patient Indra Kumari had not changed between 6 a.m. & 9.15 a.m. on 20-7-1987. However, Dr. B. P. Srivastava P. W. 9 who was on emergency duty from 8 a.m. on that day and was called to certify the patient's condition before she made a dying declaration, would have us believe that she was fully conscious and in a position to make dying declaration. As already indicated earlier, he did not record any data or particulars regarding the examination of the patient allegedly made by him before recording the certificate on the dying declaration Ex. Ka-11. He too admitted from a perusal of the Bed Head Ticket) that the general condition of the patient had not improved in between 6 a.m. and 9.15 a.m. on that day. It may also be noticed here that Indra Kumari succumbed to her burn injuries at 3.30 p.m. on 20- 7-1987.

12. In view of the incoherent and inconsistent statement made in the dying declaration which appears to have been made under an utter state of confusion and hallucination, it cannot be said that Indra Kumari was in a fit State of mind at the time she made the dying declaration, particularly in the backdrop of her general condition as also the pulse and blood pressure noticed by Dr. Leley P.W. 4 and Dr. J. P. Pandey D.W.I before and soon after the dying declaration was made.

13. It is no less significant to find from the record that the characteristic odour of the kerosene oil and the sooty blackening of the burnt parts were not noticed by Dr. Leley P.W. 4 who examined the patient at 4.30 a.m. on 20-7-1987 nor was the same noticed by Dr. K. K. Chakravati P.W. 5 who conducted the autopsy on the deadbody of Indra Kumari on 21-7-1987 at 3.50 p.m. Modi in this Medical Jurisprudence at page 235 (21 st Edition) has opined, 'Burns caused by kerosene oil are usually very severe, and are known from its characteristic odour and the sooty blackening of the burnt parts.'" Dr. S. N. Leley P.W. 4 has clearly stated during his evidence that if there were odour of kerosene oil, he would have certainly noted the same on the Bed Head Ticket. Dr. K. K. Chakravarti has also stated in para 8 of his evidence that the odour of kerosene oil is found available till autopsy if the person is set ablaze after pouring kerosene oil. He however added that if the post-mortem is conducted after 4-5 days, the odour of kerosene oil may

not be found. In the instant case, the autopsy was conducted on,21-7- 1987 at 3.30 p.m. while the incident is said to have taken place sometime after midnight of 19/20-7- 1987 and the victim of the incident, namely Indra Kumari was admitted at the hospital at 4.30 a.m. on 20-7-1987. Dr. Chakravarti P.W. 5 clearly stated in para 7 of his evidence that there was no odour of kerosene oil from the deadbody while he conducted the post-mortem examination. It may also be pointed out that Dr. Leley P.W.4 stated that the case of this patient was noted in the Accident Register because it was taken as an accident case. However, he had informed the Police for dying declaration.

14. The motive for bride burning in this case is said to be the demand of motor-cycle after seven years of marriage. Babu Lal P.W. 2 who is the father Of deceased Indra Kumari, admitted during his evidence that the Gauna of his daughter had taken place three years before the accident and he had already given a bicycle to his son-in-law, namely, Krishna Chand. He further stated that the relations between appellant Krishna Chand and his daughter Indra Kumari were cordial. It is further found from the post-mortem examination report that the deceased Indra Kumari was carrying a pregnancy of about six weeks at the time of her death. Regarding the demand of motor-cycle, Babu Lal P.W. 2 stated that it was raised about three months before the occurrence. It is not comprehensible that appellant Krishna Chand who had rested himself content with a bicycle given at the time of Gauna, would start raising a demand for motor cycle after about seven years of his marriage. Babu Lal P.W. 2 does not appear to be a wholly truthful witness inasmuch as he conceded during his cross-examination that he had made a wrong statement that his relative Bhagwati had intimated him about the burning of his daughter. He had to admit that Bhagwati happens to be a maternal uncle of appellant Krishna Chand. He did not also make any mention in the written-report lodged at the Police-Station about the dying declaration made by his daughter to the Magistrate. He claims to have met his daughter Indra Kumari at about 10 a.m. on 20-7- 1987 afterher dying declaration was recorded. Munna Lal P.W.1 who lives in the neighbourhood of the appellants' house also stated during his evidence that father of appellant Krishna Chand knocked his door at about 2/2.30 a.m. and told him that his daughter-in-law got burnt and had to be carried to the hospital for treatment and that appellant Krishna Chand had gone to fetch

rickshaw. He also deposed that no quarrels took place between the wife and the mother of appellant Krishna Chand. This witness has not been declared hostile by the prosecution and therefore his evidence may be taken on its face value.

15. The defence plea is that Indra Kumari caught fire while she had gone to ease herself in the night with a Dhebri. This plea of accidental death may not be ruled out altogether particularly in the absence of characteristic odour of kerosene oil and sooty blackening on the burnt parts soon after the occurrence as also the immediate conduct of appellant Krishna Chand in carrying her to the hospital for treatment. If the appellant were involved in the burning of the deceased, it is not comprehensible as to why the deceased would have been taken to the hospital for treatment because in that case there was chance of her survival and her dying declaration being recorded by the Magistrate. This conduct is also suggestive of their being not offenders. In any case, we are not satisfied on the basis of the material placed on record that the deceased Indra Kumari was in a fit mental state to make the dying declaration at the time she is said to have made the same before Sheo Kumar Srivastava P.W. 11 who also failed to satisfy himself about the fit mental state of the declarant. We do not, therefore, feel inclined to accept the dying declaration Ext. Ka-11 as a reliable and truthful piece of evidence to constitute the basis for conviction of the appellants.

16. In the result, we find it highly unsafe to record the conviction of the appellants on the basis of dying declaration Ext. Ka-11 recorded by Sheo Kumar Srivastava P.W. 11. Accordingly the conviction and sentence recorded against the appellants are set aside and the appeals are allowed. The appellant Chandra Kala is already on bail. She need not surrender to the bail bonds which are hereby discharged. Appellant Krishna Chand will be set at ' liberty forthwith unless his detention is required in connection with some other case.