

Ashok Kumar Vs. State

Ashok Kumar Vs. State

SooperKanoon Citation : sooperkanoon.com/684607

Court : Delhi

Decided On : Jan-29-1988

Reported in : ILR1988Delhi535

Judge : Charanjit Talwar and; Malik Sharief-ud-Din, JJ.

Acts : Punjab Police Rules, 1934 - Rule 25; [Evidence Act, 1872](#) - Sections 32

Appeal No. : Criminal Appeal No. 124 of 1985

Appellant : Ashok Kumar

Respondent : State

Advocate for Pet/Ap. : D.R. Sethi,; I.U. Khan,; Raman Sawhney and;

Judgement :

Malik, J.

(1) The appellant has challenged the order of the learned Additional Sessions Judge dated 21st of May 1985 by which he was convicted of an offence under section 302 of the Indian Penal Code and sentenced to imprisonment for life.

(2) The brief allegation against the appellant is that on 2nd of February 1984 in the kitchen of his premises No. C-495, J. Colony, Khiala, Delhi, he sprinkled kerosene oil on his wife Pushpa Devi, deceased, and set her ablaze as a result of which she

suffered hundred percent burn injuries resulting in her death on the same night. The deceased Pushpa was living in the aforesaid premises Along with the sister of the appellant one Sila Devi, and appellant, her husband

(3) The F.I.R. in this case is based on a statement of the deceased Pushpa Devi marked hx. Public Witness 3 A made to S.I Piara Singh, police station Tilak Nagar. S.J. Piara Singh Hsd gone to the Safdarjung Hospital where the deceased, was got admitted by the appellant. He came to the hospital pursuant to the D.D. report No. 59-B and was accompanied by constable Sohan Bir Singh. On seeing the condition of the deceased he made an application to the doctor attending on her to state if the deceased was fit to make a statement. The doctor certified in the affirmative and thereafter she made the following statement before S.T. Piara Singh :

'I have been set ablaze by my husband Ashok. At that time I was present at my home. There was no other male member present at home at that time- A quarrel ha? taken place between us where upon my husband poured kerosene oil upon me from a bottle and set me ablaze with the help of a match- box. T was married about one and a half years ago. The name of my father is Mata Din. a resident of Kotia. My husband is running a general store.

(4) We may notice here that the aforesaid dying declaration marked Ex. Public Witness 3/A was witnessed by Dr. Vishnu Murti (P.W. 17) and also by constable Ram Chander (P.W. 16). Earlier-. this dying declaration, at the time of her admision. to Safdarjung hospital by the appellant at 3.10 p.m. the deceased is stated to have made a declaration to Public Witness 17 Dr. Vishnu Murti regard ins the circumstances in which she came to be burnt. This statement of the deceased was recorded by Public Witness 17 Dr. Vishnu Murti in the M.L.C. marked Ex. Public Witness 17/A. This M.L.C. also represents a similar version regarding the incident and in this Mlc Public Witness 17 Dr. Vishnu Murti apart from noticing what the deceased stated before him also makes note of the fact that the deceased was brought to the hospital by Ashok Kumar (husband) at 3.10 p.m. on 2-2-1984. At this stage we may reproduce the contents of the statement made by the deceased before Public Witness 17 Dr. Vishnu Murti which is as follows :

'ALLEGED history of sustaining homicidal burn injuries while she was sitting at her house, her husband (Ashok Kumar) quarrelled with her and poured kerosene oil over her and lightened with a match stick on 2-2-1984 at her residence C-495, Khiala, J. J. Colony, around 11.30 to 12.30 p.m., exact time not known. She says nobody else was present at the time of the incident in the house. She also says that her husband quarrelled with her since marriage and say', that I want to leave you'."

(5) The statement Ex. Public Witness 17/A recorded in the M.L.C. made by the deceased is the first in time when apart from the deceased, her husband the appellant and Dr. Vishnu Muiti were only present.

(6) The information about the deceased having been admitted to hospital in the police station Tilak Nagar vide D.D. No. 59-B dated 2-2-1984 was conveyed by constable .Ramesh Chander (P.W. 5) on his behalf and on behalf of H.C. MahinderSingh. (P.W. 14) as both of them were on duty in the Safdarjung hospital. In short, therefore, the prosecution case is that on the date and time of the incident a quarrel took place between the appellant and the deceased and the deceased was set on fire after sprinkling kerosene oil on her by the appellant and that at the time of the incident none-else apart from the deceased and the appellant were in the house though in the dying declaration Ex. Public Witness 3/A the deceased had said that no male member was present at that time.

(7) We may also notice the fact that while S.I. Piara Singh was busy in investigation at the hospital, the court is told that the S.H.O. Shri Jagdish Chander (P.W. 20) also came to the hospital. From his deposition it is evident that he made an attempt to fetch the Sub-Divisional Magistrate for recording the statement of the deceased but, unfortunately, he could not fetch him before the deceased died at 7 p.m. on the same day. After recording the statement Ex. Public Witness 3/A of the deceased the Sub-inspector Piara Singh Public Witness 19 went to the scene of the incident where he prepared a site plan and also seized certain articles connected with the incident. The investigation was thereafter taken over by Public Witness 20 Shri Jagdish Chander, S.H.O., who prepared the inquest report and got the autopsy of the dead body conducted by Dr. L. T.Ramani (P.W. 15).

(8) It would be worthwhile to notice at this stage that Dr. Vishnu Murti (P.W. 17) had noticed 100 per cent burns on the person of the deceased. Dr. L. T. Ramani (P.W. 15), the autopsy Surgeon, had also noticed second to third degree burns which were anti-mortem. In his opinion the death was due to shock resulting from burns and the time since death was 28 hours, when he conducted the post-mortem at 2 p.m. on. 3-2-1984. Dr. Ramani (P.W. 15) did not smell any kerosene oil in the scalp hair of the deceased though he admits that in case the body smells of kerosene oil it is not mentioned in the autopsy report. He has, however, found root deposits in various parts of the body which is a characteristics of burns by-kerosenecil. Since the cause of death is not in dispute, there is no need for us to make a reference to his testimony in detail. That the deceased had sustained 100 per cent burns is not in question. The case of the prosecution is that she was murdered by the appellant by setting her ablaze. The defense version is that it was a case of accidental burning. In the circumstances of this case, therefore, an examination of these two versions on the facts and circumstances of this case is all that is required. The case of the prosecution, in fact, hinges on the uncorroborated dying declaration of the deceased Ex. Public Witness 171A made before Public Witness 17 Dr. Vishnu Murti and also the dying declaration Ex. Public Witness 3/A made before Piara Singh, S.I. (P.W. 19). The defense version is sought to be proved by Public Witness s. 1 to 3 Shri Kartar Singh. Shri Chhote Ram and Shri Tilak Raj, all residing in the neighborhood of the house where the incident took place.

(9) Now before we examine the relevant evidence, a reference may be made to the fact that the prosecution has made an attempt to show that this is a case of bride burning as the parents of the deceased failed to fulfill the dowry demands of the appellant P.W. 1 Kaushalya Devi and Public Witness 2 Mata Din (mother and father of the deceased respectively) have been examined on this aspect. Both of them said that they had been told by the deceased that she was being harassed for bringing insufficient dowry. In the same breath they say that at the time of the this age it was agreed that no dowry will be given. Earlier to this at no stage had they made any grievance that the deceased was being harassed for want of dowry. On a close examination of the testimony of both these witnesses we find that their testimony in respect of the background in which the offence was allegedly

committed does not inspire confidence. However, we want to make it clear that not in all cases the evidence regarding motive for the commission of the crime is forthcoming. If the prosecution on the basis of credible and reliable evidence otherwise is able to connect the appellant with the commission of crime there is hardly any need for going into the motive part of the case. In cases where direct evidence is available motive hardly assumes any importance. In the present case, we are told by the deceased that ever since her marriage the appellant used to quarrel with her and immediately before the incident a quarrel had taken place between her and the appellant.

(10) The next aspect that we are called upon to examine is as to whether the dying declarations Ex. Public Witness 17 /A and Ex. Public Witness 3/A made in this case are truthful and can be acted upon. This in turn will depend upon the examination of all the relevant circumstances in which the dying declarations were made and also calls for an examination of the testimony tendered by defense witnesses who, in fact, have set up a counter case inasmuch as they have gone on record to state that they were told by the deceased that she got burnt by the stove while cooking meals.

(11) The dying declaration Ex. Public Witness 3/A has been recorded by Piara Singh, S.I. (P.W. 19) in the presence of Public Witness 17 Dr. Vishnu Murti and Public Witness 16 constable Ramesh Chander who have also attested it. All of them have proved the same, and it is also established that at the time of the making of this statement the deceased was fit to make it. Public Witness 16 constable: Ram Chander is categorical in respect of the fact that at the time of the recording of the statement none else excepting he, Shri Piara Singh and the doctor were present. A perusal of the dying declaration Ex. Public Witness 3/A would show that it is very precise and to the point and is similar to the one made by the deceased to Dr. Vishnu Murti that Ex. Public Witness 17/A at 3.10 p.m. when the deceased was first brought to him in the hospital. In substance both these dying declarations clearly point out that the appellant had set the deceased ablaze and in both the causes given by her is quarrel. We find no earthly reason for Dr. Vishnu Murti (P.W. 17) to record a concocted statement of the deceased. He is a respectable man in his own right. The dying declaration recorded by Dr. Vishnu

Murti (P.W. 17) is the first in point of time and was recorded as soon as the deceased was admitted and was made in the presence of the appellant. There is no reason for a dying person to involve an innocent. The dying declaration made before Public Witness 17, in our view, is truthful and represents a faithful version of what the deceased had disclosed.

(12) Mr. Sethi, learned counsel for the appellant, urges that in recording the dying declaration Ex. Public Witness 3/A, Public Witness 19 Piara Singh has given a go-by to para 25.21 of the Punjab Police Rules and since there has been a non-compliance with the rule, this dying declaration should not be relied upon. It is indeed true that the aforesaid rule does lay down the manner in which the dying declarations were to be recorded but in the ultimate analysis much will depend upon the circumstance., of each case. In certain cases it is possible that the time factor may not permit the strict compliance as in the process the prosecution may be deprived of a valuable piece of evidence against the offender. That is not to suggest that rule should not be complied with but whether the non-compliance is as a matter of habit or riot will depend upon the facts and circumstances of each case. In this case we have the testimony of both Public Witness 19 Piara Singh S.I. and Public Witness 20 the S.H.O. that an attempt was made to fetch the Magistrate but by the time his presence could be secured the deceased had already died. That apart, the dying declaration Ex. Public Witness 3/A has also been witnessed by Dr Vishnu Murti (P.W. 17) and constable Ram Chander (P.W. 16). Dr. Murti is essentially an independent Person. In any case. the truthfulness of the dying declaration Ex. Public Witness 3/A. in our view cannot be doubted. Also, in the light of the dying declaration Ex. Public Witness 17/A made by the deceased to Dr. Murti at 3.10 p.m. Since both the dying declarations in substance directly involve the appellant with the commission of the crime, the truthfulness thereof to our mind. has been established beyond doubt. In this view we are supported by State of Punjab v. Amarjit Singh, : 1989 CriLJ95 : wherein it is held 'The practice of Investigating Officer himself recording a dying declaration during the course of investigation ought not to be encouraged and it would be better to have dying declaration recorded by Magistrate, but no hard and fast rule can be laid down in this regard. It all depends upon the facts and circumstances of each case. In the instant case, the Investigating Officer belongs to the Public Station at 'B' where the

deceased was allowed to have sustained the burn injuries. Upon intimation by wireless message that deceased was admitted in Hospital 'L', he straightaway went to that place. He met the Doctor and recorded the statement of the deceased. The Fir was issued on the basis of that statement. The investigation went on accordingly at 'B'. The Police Station at 'B' was 92 Kms. from 'L' and that 'B' was in different district altogether. In these circumstances, no fault could be found with the Investigating Officer for not getting the dying declaration recorded by a Magistrate.'

(13) Moreover, in the present case there has been no deliberate attempt not to fetch a Magistrate for recording the dying declaration. In fact, serious attempt was made to fetch the Magistrate 'but. before he could be available the deceased had breathed her last on the same day.

(14) It was urged before us that these dying, declarations were made by the deceased under the influence of her parents. Reliance in this regard is placed by the defense on the testimony of Public Witness 5 Ramesh Chandr who in cross-examination has deposed that at the time he met the deceased in the hospital the relations of the deceased were there and one of them was her father. He further states that on his inquiry as to how she got burnt he was informed by the deceased that she got hums with .the stove. It may be noticed that this Public Witness was declared hostile. In fact, he was the duty constable in the Safdarjung hospital and all that .he had done was to convey the message to 'he police station that a burn case has been admitted to the hospital. The statement which he had made shows that he has only accepted the suggestion given by the defense. It is, in our view. obviously made by an .arrangement. It is impossible for us to believe that at 3.10 9. when the deceased made the statements she was surrounded by any of her parents. Ever according to the defense version when the. deceased was removed to the hospital information about, the incident was sent to her parents. Obviously, they could not have been present in the hospital at the time she made the dying declarations. Even according to Public Witness s 1 and 2, both mother and father of the deceased, they reached the hospital after 5.30 p.m. when the deceased had already become unconscious which was never regained till her death.

(15) Now in the light of this, we may examine the defense version at this stage. The case of the appellant is that he was not present in the house at the time of the incident. The first dying declaration Ex. Public Witness 17/A states that none else excepting the appellant and the deceased were present in the house at the time of the incident. Ex. Public Witness 3 /A states that no other male member was present in the house at the time of the incident. We are told by D.Ws 1 to 3 that at the time of the incident the appellant was not in the house nor was he found on his shop nearby. The court is also told by the defense witnesses that on finding the smoke and fire omitting from the house they found the door bolted from inside and that it was opened by Sita, sister of the appellant, who started crying and rushed to fetch the appellant. The court is also told by the defense witnesses .that they found the deceased burning in a sitting condition and that they picked up a mattress and wrapped it around her to extinguish the fire. It is also stated that thereafter she was taken to the hospital wrapped in the same mattress and that they also accompanied the deceased and her husband. That have also testified that on being asked the deceased told them that she got accidentally burnt by stove while cooking meals. We have already referred to the testimony of P.W. 5 who has supported the last part of the defense evidence that she got burnt accidentally by stove. We need not attach much importance to the testimony of Public Witness 5 in view of the observations we have already made against him. There 's nothing on record to show that Public Witness 5 constable Ramesh Chander sot into contact with the deceased at any point of time. He has even gone to the extent of staling that the relations of the deceased were present when she was admitted to the hospital which as a matter of fact had been found to be totally incorrect.

(16) Now adverting to the defense evidence, to our mind, it is neither truthful nor reliable. Their version is that they found smoke and flames and when they went towards the house, Sita Devi. sister of the appellant, unbolted the door from inside and they extinguished the fire by wrapping a mattress around the body of the deceased. We may recall that the deceased had silvered 100 Per cent burns at the time when the fire' was extinguished. Obviously, she had completely burnt all over the body by the time the fire was extinguished. It is unnatural that she would keep quiet and not cry turn help if the fire was accidental. In that event she would

surely be free to help herself and also cry for help. If that be the case, her sister-in-law's attention, who according to the defense, was in the house would be immediately attracted and she would be the first to provide help and cry for it. No one, as the facts of the case go to suggest, provided any help to the deceased. Strangely, the court is told that even though she was in the house her attention was only attracted to the incident when the defense witnesses cried from outside and it was only at that point of time that she unbolted the door from inside. This normally does not happen in real life. To reiterate our earlier view, the 100 per cent burns on the body of the deceased is indicative of the fact that no body came to her help at the time of the incident and it was only after the incident that the defense witnesses in all probability arrived at the scene. The mattress in which she was wrapped and carried to the hospital, according to the defense witnesses, was not found in the hospital which only goes to show that the version in respect of the incident tendered by the defense witnesses is by arrangement.

(17) There is no doubt that these defense witnesses are the immediate neighbours of the appellant and naturally they must have appeared on the scene after the incident and may have even accompanied the appellant and the deceased to the hospital. As stated by Public Witness 19 S.I. Piara Singh, I.O. they were found in the hospital and thereafter at the scene of the incident but on enquiry from them they did not state anything before him about the incident or about the dying declarations alleged to have been made by the deceased before them. He says that he made a mention about it in the case diary. Public Witness 19 S.I. Piara Singh, it seems, was only cross-examined on the point if he had met these D.Ws in the hospital and if he had enquired of them and the reply given by him in the affirmative though he maintains that none of them stated anything before him in respect of the incident. It would be noticed that after putting this question the defense did not go any further and to ask him that, in fact, the D.Ws. had disclosed the defense version to him but he did not record the same with a view to suppress the important witnesses. This risk the defense did not take while cross-examining the witnesses and there is no reason as such to disbelieve Public Witness 19 S.I. Piara Singh on this point.

(18) The fact that the site plan was prepared at the instance of defense witnesses only shows that they had seen the place of incident. It can in no way lead to the conclusion that they knew anything about the incident.. It is also true that Sita Devi, sister of the appellant had told Public Witness 20 Jagdish Chander S.H.O. that she was drying clothes at the terrace when she heard a cry and on coming down found the deceased burning and then unbolted the house to enable neighbours to enter the house and that the appellant was not there then. In view of what we have stated earlier, it only goes to show that she cannot be trusted particularly in view of the over all facts and circumstances of this case. In any case, the fact that she had stated something before the investigating officer does not take us any where. The defense was within its right to examine her so that her testimony could be tested at the yardstick of cross-examination. In that view of 'he matter we are not in agreement with the contention of Mr. Sethi, learned counsel for the defense, that the most important and material evidence has been suppressed by the prosecution. On the facts and circumstances of this case the observations made in *Habeeb Mohammad v. State of Hyderabad*, : [1954]1SCR475 are not attracted. The autopsy surgeon in this case has noticed shooting at various parts of the body of the deceased which shows that kerosene oil had been sprinkled. An accidental fire by stove normally would not cause 100 per cent burns and there will be plenty of time for the deceased to help herself. It is only due to combustible material that the fire would engulf the entire body making the victim helpless. The scene of the incident, as noticed, also does not, indicate that the deceased was working Or the stove at the time of the incident.

(19) In view of the aforesaid observations, we find that there was complete justification for the trial court to convict and sentence the appellant. We find no. merit in the appeal which is dismissed.