

Raj Pal Vs. State

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Court : Delhi

Decided On : Sep-26-1988

Reported in : 1989(16)DRJ193

Judge : Charanjit Talwar and; M.K. Chawla, JJ.

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

Appeal No. : Criminal Appeal No. 115 of 1985

Appellant : Raj Pal

Respondent : State

Advocate for Pet/Ap. : H.R. Khan and; Rupinder Wasu, Advs

Judgement :

Charanjit Talwar, J.

(1) The prosecution case that Raj Pal (the appellant herein) sprinkled kerosene oil on his wife Nirmala during the night 25th-26th August, 1983 and burnt her, has been found to be established by the Addl. Sessions Judge, New Delhi vide his judgment of 8th May, 1985. Nirmala expired on 27th August, 1983. The appellant who has been convicted for the offence punishable under Section 302 of the Indian Penal Code and sentenced to undergo life imprisonment, challenges the findings of the trial court in this appeal.

(2) As per the prosecution case, Nirmala made as many as six declarations which have to be considered as 'dying declarations'. These six declarations can be divided into two sets ; one set of declarations exonerates the appellant herein and the other set, completely implicates him. The learned trial court after noticing the facts of the case in detail, has rejected those declarations which exonerated Raj Pal, the appellant herein.

(3) We may notice that one of the declarations was recorded by a local Magistrate. In that statement, Nirmala stated that her husband Raj Pal had sprinkled kerosene oil on her and thereafter burnt her. This statement was recorded by the Magistrate after Dr. A.S.N. Rao of the Safdarjung Hospital had declared Nirmala fit to make a statement. The statement made to him (i.e' the Magistrate) was recorded in Hindi, the language spoken by Nirmala. The translation of that statement (Ex. Public Witness .-2/B) reads :

'I am illiterate. I have been burnt by my husband Raj Pal. He has burnt me with the help of lamp. He has also poured kerosene oil upon me. He used to quarrel with me and continued to do so. There was no mistake on my part. I am telling all truth. He said that she would not go to fetch water.'

(4) Shri Bhola Dutt had recorded the above statement. There is a certificate by Dr. A.S.N. Rao on it that Nirmala 'is conscious, coherent, responding to questions and fit for statement.' That certificate has been exhibited as B1 to B1. On the reverse page of Ex. Public Witness . 2/B is another certificate (Ex. Public Witness .6/B) by Shri Bhola Dutt, He has noticed that Nirmala had made a voluntary statement without any influence, threat or coercion and that at the time when the statement was recorded, excepting for Dr. A.S.N. Rao, no one else was present in the ward. Shri Bhola Dutt has appeared as Public Witness . 6.

(5) It appears that after the burning incident, Nirmala had stated to her sister Bimla (P.W. 8) and to her brother-in-law Jivan Raj, (P.W. 9) that it was her husband who had burnt her during the night 25th-26th August, 1983 in their room. But these two witnesses did not support the prosecution case and resiled from their earlier statements made under Section 161 of the Code of Criminal Procedure. The learned trial court has found that Public Witness . 9 is the real brother of the

appellant herein. It seems that Nirmala and her sister Bimla were married to two brothers. We agree with the finding of the trial court that in all probability Jivan Raj had persuaded his wife, Public Witness . 8 Bimla to resile from her earlier statement only to save the life of the appellant herein. Jivan Raj had also turned hostile to the prosecution for exactly the same reason.

(6) The third statement exonerating the appellant is contained in the M.L.C. (Ex. Public Witness . 1/A). This certificate is in respect of Nirmala and was prepared at the time of her admission in the Casualty Ward of the Safdarjung Hospital, New Delhi on 26th August, 1983 at 00.20 A.M. It is worth noticing that it was the appellant who had got her admitted in the hospital. The information recorded therein was at the instance of the patient herself. It is stated therein :

'ALLEGED history of having sustained thermal burns accidentally while sleeping at home when a k. oil lamp (lighted) fell and her bed- sheet caught fire. The incident occurred at about midnight on 26-8-83 at their residence.'

(7) On receipt of the information about this burning incident, Asi Ramesh Chander of Police Station, Mehrauli (P.W. 12) recorded the statement (Ex. Public Witness 12/B) of Nirmala in the Burnt Ward of the hospital. In that statement the history given in the M.L.C. is repeated and certain details as to how the lamp fell down. were also given. It is alleged that Nirmala said :

'I along with my parents, in-laws and husband reside at the afore- said address. Today I was sleeping at my house while wearing the Terri cot suit. Lamp was also kept near my cot. Suddenly a cat came there and fell down the said lamp. As a result of which the oil from the lamp fell upon my clothes. My clothes caught fire and there were flames of fire. I made an alarm and tried to put off the fire. The skin of my entire body got burnt. Hearing the alarms my mother-in-law, husband and father-in-law came over there. All of them tried together to extinguish the fire and succeeded to put it off. My mother-in-law, husband and father-in-law brought me to the hospital and got me admitted. here. No body has burnt me forcibly. My in-laws threat me well. I did not have any sort of discomfort there. My clothes have been caught in this fire because of felling down of the lamp by the cat. I have not been burnt forcibly by any one. My husband, mother-in-law, father-in-law, brother-in-law

or sister-in-law do not have any sort of quarrel or enmity with me. I have heard the statement and the same is correct.'

(8) It was thereafter that on an application made by Asi Ramesh Chander to the Magistrate to record the statement of Nirmala that Shri Bhola Dutt recorded the statement at 2.45 Pm on 26th August, 1983. At 4.00 P.M. the said A.S.I, with the permission of the Doctor examined Nirmala again. It is in this statement (translation of which has been exhibited as Public Witness . 12/D) that Nirmala made it clear that her earlier statement exonerating her husband was made due to fear of her in-laws. The said declaration is to the following effect :

'THE statement which I made last night was made due to the fear of my in-laws. Now I without coercion or compulsion from any quarter made the following statement, truly : 'ABOUT ten years ago from today I was got married to one Raj Pal s/o Sh.Hans Ram, r/o H.No. 2/85, Mehrauli. I have been visiting the house of my in-laws for the last three years. My husband had been harassing me. He used to say that his in-laws were of very low standard. I continued to bear such taunts of my husband for two years and I did not tell about this even to my parents, or brother for the sake of dignity. He stayed to harass me extremely this year and I, being compelled, made a complaint to this effect to my parents and brother. I went to the house of my parents at Ghuman Hera in the current month on Raksha Bandhan. This time also I made a complaint to my mother in respect of my husband's behavior. Yesterday on 25-8-83 Raj Pal brought, back to his house at Mehrauli from the bus saying as to what bad my parents and brothers have done of him and he will see me after reaching home. After reaching the home, Raj Pal gave me beatings and my elder sister Bimla extricated. Then we went to bed in our room. At about 12-00 night when Raj Pal sprinkled kerosene oil upon me, I woke up. When he tried to lit the fire to me with the help of lamp in his hand saying that he was going to finish me that day, I folded my hands before him, but he after removing the chimney of the lamp, lit the fire to my clothes. When I raised an alarm, he formally tried to put off the fire and then ran away from there leaving me burning and closed the door. Hearing my alarms, my elder sister Bimla came over there and her husband also came behind her. They extinguished the fire and removed me to the hospital. I am also pregnant for the last six months. Legal

action may be taken against Raj Pal. I have heard the statement and the same is correct.'

(9) The learned trial court has rejected the version of the lamp having fallen by accident on the bed which was occupied by Nirmala and her husband, the appellant herein. Thus the statement Ex. Public Witness .12/B and also the short history, stated to have been given by Nirmala in the M.L.C. (Ex. P.W. 1/A) have been held to be false and made only under fear and coercion of her in-laws and her husband. The statement made before the learned Magistrate has been accepted to be convincing and true. Mr. Khan has taken us through the impugned judgment. We entirely agree with the findings of the trial court that the rival version given by Nirmala that it was due to accident that the cot got burnt, is to be discarded from consideration. We have no reason to believe that the statement made before the Magistrate was under any coercion, threat or fear. The statement in clear terms implicates the appellant herein.

(10) The defense put forth that the burning was due to an accident is to our mind false and the learned trial court was right in rejecting the same. There was only one cot as is apparent from the sketch of the place of occurrence (Ex. Public Witness . 10/A) and the photograph of the room. Nirmala and the appellant herein were sleeping on that cot. It is very strange that the lighted lamp which fell on that very cot burnt only the deceased Nirmala. It seems to be the appellant's case that he had also received injuries but those injuries are superficial. The burns received by him were assessed to be only 9% whereas Nirmala received 100% burns. Nirmala in her statement (Ex. P.W. 12/D) has implied that the attempt of the appellant to put off the fire was just a sham ; in fact his efforts were not at all sincere. She stated that he :

'RAN away from there leaving me burning and closed the door.'

(11) Another fact which has been highlighted by the trial court is that the intact chimney of that very lamp was found on the shelf inside the room which suggests that it had been deliberately removed. It is apparent that only the appellant could have removed it.

(12) We agree with the findings of the trial court that the appellant had sprinkled kerosene oil on Nirmala during the night intervening 25-26th August, 1983 at about midnight and thereafter burn her.

(13) There is no merit in this appeal. It is dismissed.

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