

Krishna Devi Vs. State

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Court : Delhi

Decided On : Apr-27-1979

Reported in : 16(1979)DLT103

Judge : V.D. Misra and; F.S. Gill, JJ.

Acts : [Evidence Act, 1872](#) - Sections 32(1)

Appeal No. : Criminal Appeal No. 218 of 1976

Appellant : Krishna Devi

Respondent : State

Advocate for Pet/Ap. : S.K. Aggarwal and; K.K. Sud, Advs

Judgement :

F.S. Gill, J.

(1) The present appellant, Shrimati Krishna Devi, is the sister of Madan Lal, who is the husband of Manjit Kaur deceased. It is alleged that after her marriage, Manjit Kaur was subjected to maltreatment by the members of her husband's family, including the appellant.

(2) IT. is further alleged that on 6.4. 1975 at about 12.30 P.M. Manjit Kaur was workg in the kitchen and was preparing 'chapatis'. She served the meal to her

young daughter Manju before anybody else. On this Krishna Devi appellant, who was also present there, reprimanded her for doing so. In her wrath she kicked the stove on which the food was being prepared. Thereafter she poured kerosene oil on Manjit Kaur's clothes. At that time the deceased was wearing a cotten 'dhoti', a silken blouse and brassiere. These cloths 104 became wet with the oil. The appellant then ignited a match stick and set Manjit Kaur's clothes on fire. The victim cried for help and called out her husband Madan Lal, who was playing with a child in the adjoining room. Immediately thereafter Madan Lal, Harish (her brother-in law) and Shakuntla (another sister-in-law) reached there and tried to extinguish the fire by putting quilts and blankets on her. Manjtt Kaur got burns on her whole body.

(3) She was removed to Safdarjung Hospital, where, on admission, she was promptly attended to by Dr. Ashok Kumar. Before the said Doctor the injured made a voluntary and spontaneous statement to the effect that at the time she was cooking the food her sister-in-law Krishna had poured oil over her from the stove and had then set her clothes on fire with a match box. She further added that she had run outside the kitchen but got burnt.

(4) On the other hand, Kalkaji police was informed about the incident by one Suresh Kumar at 1.40 P.M. on the same day. The Duty Officer recorded his report EX.PW3/A in the Daily Diary and deputed S.I. Shri Kishan Tomar to proceede further in the matter S.I.Tomar immediately went to the hospital and recorded the statement of Manjit Kaur injured, which is Ex. PWIO/A. This statement was sent to the Police Station and on its basis a case under section 307 of the Indian Penal Code was registered.

(5) Noticing that the condition of the injured was deteriorating on account of the deep burn injuries, the Investigating Officer approched the Ilaqe Magistrate and made an applicatin EX.PW20/A for recording the dying deciara of the injured. Shri M.L.Sahni, Metropolitan Magistrate went to the Hospital at midnight and recorded the statement of Smt. Manjit Kaur at 0.45 A..M.

(6) Manjit Kaur died on 7.4.75 at 5.43 A.M. as a result of the burn injuries she had received. Thereafter the Investigating Officer converted the case to one under

section 302 of the Indian Penal Code

(7) POST-MORTEM examination on the dead body of Manjit Kaur was performed by Dr. T.D. Dogra of the All India Institute of Medical Sciences On 7.4.75 at 2 P.M. He found a large number of burn injuries on the various parts of the dead body. The cause of death was stated by him to be due to shock as a result of extensive burns on the body.

(8) After necessary investigation, Krishna Devi was challaned in the Court of a Magistrate, who committed her to Sessions Shri Joginder Nath, the learned Addl. Sessions Judge convicted the appellant under section 302 of the Indian Penal Code and sentenced her to imprisonment for life. Aggrieved from this judgment, the present appeal has been preferred by the convict.

(9) In this case the venue of the occurrence was admittedly in the house of the husband of the deceased, though the versions of the parties about the incident are divergent. Secondly, it is also an admitted fact that the appellant is the sister of the deceased's husband. It was, therefore, quite natural that the members of the family of Madan Lal (husband of the deceased), including himself, would have made every endeavor to help the appellant. That was the obvious reason, which would have impelled the prosecutor to give up Madan Lal and Harish, who had been cited as prosecution witnesses in the calendar of evidence.

(10) The entire case hangs on the intrinsic worth of the various dying declarations made by Manjit Kaur deceased to different persons. The first statement, which later turned into a dying declaration, was made by her before Dr. Ashok Kumar (Public Witness 7) when she was admitted in Safdarjung Hospital immediately after the incident. Thereafter she made a statement before S.I. Siri Kishan Tomar, then to her parents and later before a Metropolitan Magistrate. All these statements became her dying declarations after her death.

(11) It is significant to observe that the statements to Dr. Ashok Kumar (PW7) and Sub-Inspector Siri Kishan Tomar (Public Witness 21) had been made by the deceased before the arrival of her parents in the hospital. So they assure great importance for the simple reason that they had been made without any extraneous

influence or rancour or ill-will. The y nirate the occurrence most coincide but explicitly. There seems no embellishment or adulteration.

(12) The occurrence had taken place at 12.30 P.M. on 6.4.75. The injured was admitted in the Hospital at 2.15 P.M. on the same day as is evident from the medical legal report Ex.PW7/A proved by Dr. Ashok Kumar. The following statement was made by Manjit Kaur before Dr. Kumar :-

'As stated by herself. Today (6.4.75) about half an hour back (1.30 P.M.) while patient was cooking the food her sister-in-law (sister of her husband) named Krishna came to her and threw the oil from stove over her. After that she lit the fire with match box over her clothes. She ran outside and get burnt.'

(13) The occurrence had taken place in house No. 283, Block No. 9, D.D.A. Flats, Govind Puri, Kalkaji, New Delhi. It would naturally have taken some time to cover 6/7 kilometers from the place of occurrence to Safdarjung Hospital where the injured was admitted. It can, therefore, be safely said that the statement before the Doctor was made without any amount of delay. There was therefore, no opportunity available to the parents or other relatives of the deceased to inculcate an innocent person. There was a strong reason to do so in view of the peculiar circumstances of the case,

(14) The second dying declaration was made by the deceased before, Sub-Inspector Siri Kishan Tomar a little before 4 P.M. on 6.4.75. as will be seen from Ex.Pw21/A. This statement was dispatched from the Hospital to the Police Station at 4 P.M. Substantially identical story was related before the police officer as had been unfilled to the Doctor earlier. She had consistently stated that Krishna Devi appellant had deliberately thrown the oil from the stove on her clothes and then she Had set her clothes on fire by igniting a match stck. It js important to observe that the deceased had not tried to inculcate any other member of the family of the appellant, although she had complained about the maltreatment meted out to her. In our view this serves as an assurance about the volitional and truthful nature of the statements made before the Doctor and the Sub-Inspector.

(15) Krishna Devi Public Witness PW13 is the mother of the deceased while Khem Chand Public Witness PW14 is Her father. They had arrived in the hospital at 4.45 P.M. The deceased also narrated the occurrence to them. She also complained to them about the maltreatment meted out to her by the members of the appellant's family. In their statements both, the father and mother, have tried to incriminate other members of the family. We do not believe them qua those parts as they were highly prejudiced against these persons for the obvious reasons. At that time they were surcharged with anger and had the strong feeling that their son-in-law and his parents were responsible for creating the circumstances and situation, which had culminated in causing the ultimate death of their daughter. Moreover, the statements of these two witnesses have tended to improve the original version of the deceased made before the Doctor and the Police Officer, which we consider to be unbiased and true.

(16) Other important made by the deceased was before Shri M.L. Sahni, Metropolitan Magistrate at 9.45 A.M. on 7.4.75, i.e. about four hours prior to her death. This statement Ex. Public Witness PW20/B was recorded in Hindi. Its translation is as under For the last 15 days, I had been tortured by Krishna, my sister-in-law. She used to make various types of accusation against me by saying that I used to steal the things etc. She wanted to get me turned out of the house and used to make various complaints to her brother (my husband) about me. At that time when I was carrying a child and now that child is 7 months old, Krishna, my sister-in-law used to say that the child was not that of her brother. Today, at about 12/12.30 p.m. I was preparing meals. I cooked one chapati, gave to my daughter and asked my sister-in-law to knead Atta (flour). At this, she kicked the burning stove and then threw the same on me as a result my dhoti caught fire. I started to remove my dhoti and ran outside. I raised an alarm, my husband and the other neighbours assembled over there. These persons jointly threw Kambals (blankets) on me. Raj Rani, Santosh, Kamlesh, Nanki, Chandra etc, out of the neighbours assembled there. Now she can get me killed after I have made this statement, because eight persons are on one side and I alone on the other side I apprehend danger to my life on reaching home. If they do not want to keep me there, I shall stay alone.

(17) On the foot of this dying declaration a certificate also appended, which is Ex. Public Witness PW20/C. It is stated in that the statement had been read out to Smt. Kaur and that she had admitted the contents correct. It was further certified that it had been voluntary and that there was no one else there to aid her.

(18) The above are the various dying declarations made by the deceased. The main allegations that Krishna appellant had thrown the kerosene oil from the stove on her clothes and had then set her clothes on fire by lighting a match stick have been clearly stated in all the statements. Thus the identity of the culprit and the part played by her have been very explicitly stated. There is also ample corroboration from medical evidence that Manjit Kaur had died as a result of the burn/injuries she had received.

(19) We now proceed to consider the criticism questioning the reliability and truthfulness of the various dying declarations proved in the case.

(20) The learned counsel for the appellant has pointed out that there was no odour or sooty blackening of parts of the body where the injuries were found. It is, therefore, contended that the prosecution version be disbelieved on that score alone. In support of his contention the learned counsel has referred us to the following commentary appearing at page 198 of Modi's Medical Jurisprudence and Toxicology (Fifteenth Edition):-

'Burns caused by kerosene oil are usually very severe and are known from its characteristic odour and the sooty blackening of the parts.'

(21) It is argued that the burns appearing on the body of the deceased were not of the above nature. This contention is devoid of any force because at the time the post-mortem examination had been conducted the injuries were not in their original condition they were not intact. After her admission in the hospital the injured had been rendered necessary medical aid. Obviously the burn injuries had been cleaned and bandages had been applied. It was after about 15 hours of the rendering of the medical aid that the injured had died. During this period certain changes were bound to take place in the nature of the injuries. In other words there had either been some healing or deterioration. 107 So the contention of Shri

Aggarwal does not lead us to any tangible result and, therefore, does not advance his case.

(22) The other attack made by the learned counsel for the appellant is about the statement recorded by the Metropolitan Magistrate. It is submitted that the necessary procedure as prescribed in Chapter 13-A of the High Court Rules and Orders (Vol. III) had not been strictly followed by the learned Magistrate and that this casts a doubt about the genuineness of the statement. The relevant rules in this regard are .-

'3. Fitness of the declarant to make the statement should be got examined. Before proceeding to record the dying declaration, the Judicial Magistrate shall satisfy himself that the declarant is in a fit condition to make a statement, and if the medical officer is present, or his attendance can be secured without loss of time, his certificate as to the fitness of the declarant to make a statement should be obtained. If, however, the circumstances do not permit waiting for the attendance of the Medical Officer, the Judicial Magistrate may in such cases proceed forthwith to record the dying declaration but he should note down why he considered it impracticable or inadvisable to wait for a doctor's attendance. '4. The statement of the Declarant should be in the form of a simple narrative:-The statement, whether made on oath or otherwise, shall be taken down by the Judicial Magistrate in the form of a simple narrative; This, however, will not prevent the Judicial Magistrate from clearing up any ambiguity, or asking the declarant to disclose the cause of his apprehended death or the circumstances of the transaction in which he sustained the injuries. If any occasion arises for putting questions to the dying man, the Judicial Magistrate should record the questions as also the answers which he receives. The actual words of the declarant should be taken down and not merely their substance. As far as possible the statement should be recorded in the language of the declarant or the Court language. 5. Signatures or thumb impression of the Declarant to be obtained in token of the correctness of the statement:-At the conclusion of the statement, the Judicial Magistrate shall read out the same to the declarant and obtain his signature or thumb-impression in token of its correctness unless it is not possible to do so. The dying declaration shall then be placed in a sealed cover and transmitted to the Judicial Magistrate

having jurisdiction to deal with the case to which it relates.'

true that there is no certificate of the Medical appended with the statement recorded by the magistrate but before recording the same the learned magistrate had obtained the opinion of the doctor in charge. He wrote docket EX. Public Witness PW7/E to Dr. Ashok Kumar before seeking his permission to record the declaration of the injured.' On the same docket Dr. Kumar made his endorsement EX. Public Witness PW7/D in the following words :-

(23) In our view this was sufficient compliance of the Rule We. also find that the learned Magistrate had taken the requisite precautions to eliminate outside aid or prompting when the statement was recorded. He had also satisfied himself that the statement nude was voluntary. These facts he had noted in his certificate recorded at the foot of the statement.

(24) It is next argued that in this statement there is an omission about the clothes having become wet with oil. This omission pales into insignificance when the statement of the deceased is read as a whole. The name of the appellant and the part played by her have been clearly stated. This statement is in full accord with the earlier statements made before the Doctor and the Police. There is thus no material discrepancy or infirmity to excite suspicion in the dying declaration made before the Magistrate.

(25) In the various dying declarations made before different officers, it is significant to observe that the declarant had not shown any kind of venom, she had made any attempt to falsely inculcate innocent persons. In our view, it is a true, faithful and untainted account of the incident, which deserves to be fully accepted.

(26) The learned counsel for the appellant has tried to find loopholes in the statement of Suresh Kumar Public Witness PW15, who had heard the cries of Manjit Kaur saying 'jal gayi'. Suresh Kumar had gone to see her sister, who was living in the ground floor. In the first floor of the same house Madan Lal, Manjit Kaur and other members of their family resided. It is contended that the cries heard by Suresh Kumar cannot be interpreted to mean that Krishna Devi appellant had thrown the kerosene oil on her and had set her clothes on fire. There is no

force in the argument as Suresh Kumar was not an eye witness. He had only heard the cries) 'Jal gayi' (I am burnt) is quite natural and spontaneous cry which would come out when a person is burnings. We, however, he find that in his statement Suresh Kumar Public Witness PW15 has further disclosed that when he had entered the room he had seen that the 'dhakan' of the 'tanki' of the stove was not fixed. Obviously the lid had been removed to take out the oil. This is a strong circumstance which appears against the appellant.

(27) Charanjit Lal Public Witness PW17 is a neighbour of Madan Lal, who too had heard the cries of the deceased. She was proclaiming 'burnt, burnt, what will happen to my children' (Jala diya Jala diya, mere bachon ka kya hoge. This witness has further deposed that when he had gone to the house of the deceased he had found the same bolted from inside and had to be knocked two or three times, when it was ultimately opened after 3 or 4 minutes. The bolting of the door from inside and the time taken in opening the same are very strong circumstances which go to show about the commission of the crime inside the house,

(28) In our view the various dying declarations made in this case have a distinctive feature of spontaneity. Their brevity has emerged as a sure guarantee of their genuineness and authenticity. When the deceased was in severe bodily pain. words were bound to be scarce. In such a state, the injured could not indulge in lengthy description of the event or scathing criticism of her husband's family regarding their treatment. Whatever words she spoke, were meaningful. They had been faithfully recorded. We consider their terms and tenor as an index of being true and untainted.

(29) The learned counsel for the appellant has last submitted that at the most an offence under section 304, Part II and not under section 302 of the I.P.C. is made out. This is not supported by any argument or reference to any part of evidence. It being meritless does not deserve any serious thought and discussion. It is, therefore, repelled.

(30) For the reasons stated above, we find no force in this appeal. It is accordingly dismissed. Appeal dismissed.

