

**Darshan Singh Vs. the State**

**Darshan Singh Vs. the State**

**SooperKanoon Citation :** [sooperkanoon.com/689507](http://sooperkanoon.com/689507)

**Court :** Delhi

**Decided On :** Feb-15-1974

**Reported in :** 1974CriLJ1082

**Judge :** P.S. Safer, J.

**Appellant :** Darshan Singh

**Respondent :** The State

**Judgement :**

**P.S. Safer, J.**

1. The appellant has come up against his conviction under Section 307 of the Indian Penal Code for which he has been sentenced to 314 years rigorous imprisonment by the Additional Sessions Judge, Delhi.

2. The allegations by the prosecution were that on the 9th of July, 1971, the appellant had brought his mother-in-law Kaushilya Devi from Hansi to Delhi. She was taken to the shop of P.W. 9 Mahinder Lal where she sat for a while. The appellant is then alleged to have come with a cycle and he took her away on that cycle. It was alleged that at a lonely spot to which she was taken the appellant inflicted injuries with an iron rod which on medical examination were found serious. The appellant then decamped. After regaining consciousness the lady who appeared at the trial as P.W. 10, was seen by P.W. 6, with blood oozing out from

her head and one of her eyes bulging out. She was saying that she had been brought from Hansi by her son-in-law. According to the prosecution P.W. 10, proceeded to a place near the shop of P.W. 7, Sarvan Singh. One of her eye balls was bulging out and she was having injuries. P.W. 3, Shiv Narain being on duty with the flying squad came to know about the occurrence, regarding which his statement before the trial Court was:

At 10.49 P. M., I received information while on petrol duty that a woman was lying unconscious on Patpar Ganj Road. I reached the spot and T found a woman there. She had many injuries on her person. I got her admitted in Irwin Hospital and then I lodged a report at the police station Gandhi Nagar. Ex. P.W. 3/A is the copy of my report. I had mentioned the name of the injured in my report as Kaushilya Devi.

3. After the investigation the police put in a challan and the proceedings for committing the accused for trial by the Court of Session were held. The injured Kaushalya Devi appeared as P.W. 2, in the course of these proceedings. She narrated the occurrence and after considering her statement along with other evidence the appellant was committed to stand his trial before the Sessions Judge. By the judgment dated the 21st of November, 1972, Shri D. C. Aggarwal, Additional Sessions Judge concluded that the appellant was guilty of an offence under Section 307 of the Indian Penal Code and convicting him he sentenced the appellant as noticed earlier. It has been urged on behalf of the appellant that the prosecution did not succeed in proving the case beyond reasonable doubt. After reading in detail the evidence of all the prosecution witnesses it has been urged that the only evidence which had necessarily any bearing on the occurrence was that of Kaushalya Devi and if the statement made by her before the Committing Court which was transferred to the record of the trial Court under Section 288 of the Criminal Procedure Code, hereafter called 'the Code' was to be read along with her deposition as P.W. 10, then her testimony was not such which could be safely relied upon to sustain any conviction.

4. The prosecution evidence is in two parts. There is the testimony by various witnesses to the effect that on the 9th of July, 1971, the appellant was seen along with P.W. 10 his mother-in-law and he left her at the shop of a sweet-meat seller

from where he took her away on the cycle. The evidence then is of those witnesses who found Kaushalya Devi P.W. 10 suffering from serious injuries shortly after she had been taken away by her son-in-law from the shop of the sweet-meat seller. In Ex. X/4 which is on the Committing Court's record it is noted by the doctor that the injuries on the person of Kaushalya Devi had been allegedly inflicted by her son-in-law. P.W. 3 who was with the flying squad had remitted the report to the police a copy whereof has been exhibited as PW3/A in which it is stated that Kaushalya Devi had reported that the injuries on her person had been caused by her son-in-law. In his statement made under Section 342 of the Code the appellant while answering question No. 1 admitted that he was in the company of his mother-in-law on the 9th of July, 1971. He did not admit that he brought her to Delhi or that he had administered any blows causing the injuries, but he did state:

The fact is that she brought me from Hansi to Delhi for search of her missing son.

While answering as to why the case had been brought against him, he stated:

I am employed as carpenter in S.D. Girls College, Hansi. The police-officer had come to me there and he asked me where my mother-in-law was. I told him that she had taken me to Delhi. That she sat at a Halwai shop and asked me to bring a cycle. I brought a cycle after about 15 minutes. My mother-in-law was, however, not present at the shop on my return. I enquired from the Halwai who told me that he did not know. I kept on searching for her till 10.00 p. m. but she was not traceable. Then the Police-officer gave me a stick blow and handcuffed me and brought me to the police station and I was confined in the lock up.' The appellant admitted that he had left his mother-in-law on the date of occurrence at a Halwai's shop and had brought a cycle after about 15 minutes, but he did not find her there. P.W. 9 Mahinder Lal was the sweet meat seller at whose shop Kaushalya Devi P.W. 10 had been left and his statement which remained unshaken was:

About 1 1/4 years ago at 7.05 p. m., accused present in Court had come to my shop. There was a woman with him and the accused made her sit in my shop. The accused told me that he would come shortly and take away the woman with him. The accused came there after about half an hour and took the woman across the

road opposite my shop and I cannot say by what conveyance he took her from there. P.W. 9, established that on returning the appellant had found the 'woman' at his shop whom he took across the road by same conveyance.

5. Apart from the evidence mentioned above the statement of Kaushalya Devi P.W. 10 and her statement transferred to the trial Court's record under Section 288 of the Code have to be taken into consideration.

The entire evidence is to be scrutinized as a whole for finding out as to whether the case stands established or not.

The testimony of P. Ws. 3, 6, 7 and 9 establishes beyond doubt that on the evening of the 9th of July, 1971, the injured Kaushalya Devi was last seen in the company of the appellant and then found injured. Who caused the injuries? P.W. 10, stated at the trial:

Accused present in Court Darshan Singh is my son-in-law. About 1 1/4 years ago, the accused had brought me from Hansi to Delhi. He had got me seated at a shop in the evening. He had left after seating me at that shop but I do not know where he had gone to. The accused had come there with a cycle thereafter. Then, I went with the accused to Gandhi Nagar side. I was hit with something on my head by two persons, one of them was a Sardar and the other was the accused. I had not been able to see what had been hit on my head. I did not see which one of the two had hit that thing on my head. I was also hit with something on my eye and on my hands, and arms. Both of my arms had been fractured, and my eye had been damaged and destroyed. I regained consciousness after one week and I was in the hospital at that time.

(At this stage, the learned A. P. P. requests that the witness be allowed to be cross-examined, as she is allegedly suppressing the truth -- Permission granted.)

XXn. by A. P. P. for the State.

My statement had been recorded in the Committing Court also. It is correct that in the Committing Court. I had stated that the accused had hit something on the back side of my head as a result of which I fell unconscious. I had also stated in the

Committing Court, that when I recovered, consciousness, I found myself in a pit. It is correct that I stated in the Committing Court that I went to the shop of a tea vendor. It is correct that I had gone to the shop of tea vendor from that pit. There, the police arrived. It is correct that the police had taken me to the hospital and after I was laid on a bed and after I was given injections, I became senseless. I had also stated correctly in the Committing Court that I had executed a general power of attorney in favor of the accused and in order to grab my property, he had injured me (sic) in order to kill me. I remained in the hospital for about a month.

The statement of mine was recorded by the police in the Hospital. The statement made by me before the police has been read out to me and it was correctly recorded, and it bears my thumb impression. (It is Ex. P. W. 5/A). My thumb impression is at point 'A'.

(At the request of the learned A. P. P., the statement of the witness made by her in the Committing Court is transferred to the Sessions file under Section 288, Criminal Procedure Code and is marked as Ex. P.W. 10/A. The vernacular record is Ex. P.W. 10/A-I. The learned defense Counsel has no objection).

Whatever I had stated before the Police Officer and whatever I stated before the Committing Court was correct.

XXn. by counsel for the accused.

Q. Is it a fact that there were two some other persons who had injured you and amongst them the accused was not?

Ans. Who else could there be.

Q. You had not seen those two persons. Is it a fact?

Ans. Yes.

Q. You did not know those two persons ?

Ans. No.

Q. You had not seen those two persons earlier?

Ans. No.

Q. The fact is that you had doubt against the accused and therefore, you named him as assailant ?

Ans. Yes. I am an illiterate lady.

I had not made any statement to anybody from the time I received injury till I reached the Hospital. I was not in consciousness. I had told the Police Officer that I had doubt against the accused. The police had not read out my statement to me and I affixed my thumb impression as I was asked to do. T had made a wrong statement in the Committing Court on the asking of the Police Officer, It is correct that I had brought the accused for the search of my son.

RO&AC;

dated: 15-11-72. Sd/- (D. C. Aggarwal)ASJ., Delhi. Re-examination:

I had executed the power of attorney Ex. P.W. 10/B in favor of the accused (three sheets).

XXn. by counsel for the accused:

I have executed that power of attorney willingly but I have got it cancelled.

Court Question:-- My son who had been missing was 16 years of age. That boy has not been traced out as yet. The boy was not searched for at Delhi and I was (sic) only that efforts would be made to search for him.

XXn. by counsel for the accused.

It did not come to my knowledge that my son was employed at some Hotel in Bhatinda.

She identified the appellant who was standing the trial as her son-in-law and affirmed that he had brought her from Hansi to Delhi where he left her at a shop to

which he returned with a cycle. Then she was taken away by him. P.W. 10, then gave a version which did not (sic) with the statement made by her before the Committing Magistrate. The learned Additional Public Prosecutor requested the Court that the witness be allowed to be cross-examined. The permission was given and on being cross-examined she admitted that it was correct that she had stated in the Committing Court that the accused had hit her with something on the back side of her head as a result of which she had become unconscious and that it was correct that in an injured state she had been removed to the hospital. After obtaining that part of her evidence the Additional Public Prosecutor made the request that the statement made by the witness before the Committing Court be transferred to the Sessions file under Section 288 of the Criminal Procedure Code. The trial Court exercised the jurisdiction provided by Section 288 of the Code and transferred the statement to its own record exhibiting it as Ex. P.W. 10/A. The consequence of the trial Court's action taken within the ambit of Section 288 of the Code is to be appreciated in the light of that provision which, is:

Section 288. Evidence given at preliminary inquiry admissible. -- The evidence of a witness (duly recorded in the presence of the accused under Chap. xviii) may, in the discretion of the Presiding Judge, if such witness is produced and examined, be treated as evidence in the case for all purposes subject to the provisions of the Indian Evidence Act, 1872.

The statement had been recorded in the course of the proceedings under Chapter xviii of the Code.

Section 288 of the Code means that where a witness is examined before a trial Court and the Presiding Judge exercises the discretion of treating the evidence of the witness adduced before the Committing Court as evidence then for all purposes it has to be the evidence in the case subject to the provisions of the Indian Evidence Act. I hold that such evidence transferred in exercise of the Judicial discretion provided by Section 288 of the Code will be at par with the evidence given by the witness at the trial and will be substantive evidence. The statement made by the witness at the trial will have to be read along with the statement transferred to the trial Court's file by exercising the power contained in

Section 288 of the Code. Both the statements will form one statement for establishing the version given by the witness.

6. P.W. 10 when examined as P.W. 2 before the Committing Court had made the following statement:

The accused present in the Court is my son-in-law. About a year back the accused had gone to my house in Hansi where I was living, and asked me to come to Delhi where he had some urgent work. He came in a bus from there. He hired a tonga from bus stand. He took me to a shop in Gandhi Nagar from where he arranged for a cycle and got me sit on the carrier. After some distance where it was lonely place and it was bit darkness the accused, hit something on the back side of my head and as a result of which I became unconscious. What happened later on I do not remember. After some time when I regain consciousness I found myself in a pit. I went to tea stall where we met a Sardar who informed the police. Police took me to Irwin Hospital and got me admitted there. I had executed a general power of attorney in favor of accused therefore the accused wanted to kill me so that he could grip my property. Before 4/5 months the accused had taken my son of about 13/14 years of age. My son Shanti Prasad is missing. I had taken my statement by the police. My statement was recorded by the police in the hospital where I remained for about 1 1/2 months. I had put my thumb impression on that statement which was read over to me and found correct. I was given injuries by the accused on the back side of my head and on my right eye and on my both hands. I cannot see with my right eye now as the same was extracted by the doctor.

XXn. Nil Opportunity given. RO&AC.; Sd/-JMIC, Delhi.

If the statement made by Kaushilya Devi as P.W. 10, at the trial is carefully considered along with the statement made by her before the Committing Court then with the corroboration provided by the statements of other witnesses examined at the trial it stands established, that the appellant had brought her from Hansi to Delhi by bus and then taken her to a shop in Gandhi Nagar to which he returned after sometime with a cycle on which he took her to a lonely place. It was there that the accused hit her on the back side of her head as a result of which she

became unconscious. She did not remember what happened later. The injuries found on her person unquestionably established as to what had happened to her after the first blow had been administered by the accused which made her unconscious. On being examined by Dr. B. Sundar. the following injuries were discovered on her person:

1. Right eye was sunken.

2. Lacerated wound bone deep on the right side of forehead 2 1/2' long.

3. Two lacerated wounds over the occipital 3' and 2' in length respectively.

4. Left index finger partially amputated through the distal inter phalange joint.

5. Blunt injuries on both wrists with deformity,

7. The deposition by P.W. 6 was that he had seen the left eye bulging out and blood was oozing from the head. He had seen her arms fractured. The witness had seen her when it was partially dark and he may have made the mistake as to whether the right eye ball was bulging out or the left eye ball was bulging out. It is, however, clear from his evidence that one of the eye balls was bulging out and blood was oozing from her head. P.W. 7's evidence was that the old woman which he saw had an injury on her head and an eye ball was bulging out. Ex. P.W. 3/A, proved during the deposition of P.W. 3, contains the averment that it had been stated that the injuries were given to Kaushalya Devi by the appellant. That was the earliest information which a police officer received. Even if Ex. P.W. 3/A is kept apart it remains established that Kaushalya Devi was uninjured when she was left by the accused at the shop of P.W. 9 wherefrom she was after sometime taken away by him. Because of her peculiar relationship, the appellant being her son-in-law, and her only son having been untraced for some years P.W. 10 departed at the trial to some extent from the version of the occurrence given by her before the Committing Court.

8. The entire evidence on the record taken as a whole establishes beyond any shadow of doubt that it was the appellant who had caused grievous injuries to P.W. 10 in order to finish her life. He admitted in his statement under Section 342

of the Code that it was correct that his mother-in-law had executed a general power of attorney in his favor. The helpless lady whose son had left the house and was missing was in the hands of a son-in-law who had the motive for bringing her alone from Hansi to Delhi and the injuries found on her person establish that the intention was to finish her.

9. The prosecution examined P.W. 1 Jamil Ahmed and P.W. 2 Bhagat Singh to support the deposition that at his instance -- after recording the statement Ex. P.W. 12/A which the appellant had made Ex. P/1 the iron rod with which the injuries had been allegedly inflicted, had been recovered. P.W. 2 Bhagat Singh was a witness who had admittedly appeared in 5-7 cases as a prosecution witness. That was not the case with P.W. 1. His testimony remains unassailed. If P.W. 1 and P.W. 12 are read together then their testimony cannot be discarded that the iron rod Ex. P/I was recovered at the instance of the appellant.

10. The prosecution succeeded in bringing home the guilt to the accused. The admissions by P.W. 10 when cross-examined by the Public Prosecutor are in the nature of evidence collected through cross-examination within the ambit of Section 154 of the Indian Evidence Act and I have appreciated them in the light of the submission by the learned Counsel for the appellant that all that the witness stated was that it was correct that she had made a particular statement before the Committing Court and not that the statement so made was correct. The correctness of the version is derived from Ex. P.W. 10/A i.e., the statement made before the Committing Court which on being transferred to Sessions file became substantive evidence within Section 288 of the Code.

11. Finding that the appellant has been rightly convicted I am of the view that it will serve the ends of justice if while maintaining his conviction the sentence is reduced to 2-1/2- years rigorous imprisonment. With that modification the appeal is dismissed.