

Prabhu Dayal Vs. State

Prabhu Dayal Vs. State

SooperKanoon Citation : sooperkanoon.com/689569

Court : Delhi

Decided On : Oct-17-1985

Reported in : 1986CriLJ383; 1986(1)Crimes3; 1986(10)DRJ147

Judge : R.N. Aggarwal and; Malik Sharief-ud-Din, JJ.

Acts : [Indian Penal code, 1860](#) - Sections 302

Appeal No. : Criminal Appeal No. 171 of 1984

Appellant : Prabhu Dayal

Respondent : State

Advocate for Pet/Ap. : K.G. Bhagat,; Rajeev Sharma and; B.T. Singh, Advs

Judgement :

R.N. Aggarwal, J.

(1) The appellant Prabhu Dayal has been convicted for an offence punishable under Section 302 of the Indian Penal Code and sentenced to imprisonment for life. Dissatisfied with the conviction and sentence, he has come in appeal.

(2) Prabhu Dayal was married to the deceased Smt. Sarita Gupta in 1975. Sarita gave birth to three children, two daughters and a son. The daughters were, at the time of the occurrence, aged 6 and 4 and the son was 8 or 9 months old. The

couple resided on the second floor of D-II, Naraina Vihar. The apartment in occupation of the couple was a single room with bath, latrine and a terrace. The living room was also used as a kitchen.

(3) On 20th December 1982 at 11.45 a.m. Prabhu Dayal went to the police station Naraina and gave information that that day at about 1115 a m. his wife Sarita Gupta, aged 28 years, who was mentally retarded has set herself on fire by sprinkling kerosene oil on her person and that he has come to report the matter.

(4) The report, copy of which is Ex. Public Witness 4/B was recorded in the daily diary. Sub-Inspector Ram Phal Singh along with Raghbir Prasad constable and Prabhu Dayal went to D-II, Naraina Vihar the scene of the occurrence. P.W. 16 Sub-Inspector Ram Phal Singh found Sarita lying in burnt condition on the floor inside the room. Public Witness . 16 leaving Raghbir Prasad at the spot to guard the place of incident Along with Prabhu Dayal removed Sarita to Safdarjung hospital. Sarita was admitted in the hospital at 12.50 p.m. Ex. Pw 7/C is the medico legal report regarding Sarita. It records that the patient herself has stated that she was set on fire by her husband P.D. Gupta at about 11 a.m. at the residence. The medico legal report further records that the patient is fully conscious and coherent. Public Witness . 16 went to the Patiala House courts and took the Sub-Divisional Magistrate Shri K. Shivaramakrishnan to the Safdarjung hospital for recording the statement of SaritUa. The Sub-Divisional Magistrate after obtaining the permission of the doctor recorded the statement Ex. Public Witness 5/A of Saria. The statement is as follows:

'MY husband set me ablaze after sprinkling kerosene oil on me. Before that he gave me severe beatings. He had closed me in a room after setting me on fire. I cried loudly but he did not open the door. This incident had taken place this morning but I did not remember the time. My husband had left for his breakfast after setting me on fire and closing me inside the room. He came after about two hours. He after opening the door put a blanket on me and left the place. I kept on calling him but the voice did not reach as our house is situated on the 2nd floor. I was admitted in the hospital by my husband himself. My husband used to give me severe beatings. I have got three cldren. We have clashes off and on.'

I was married about 6 years ago. The clashes had started recently. The quarrel started taking place from the day when I gave birth to my youngest son. My youngest son is about 8/9 months of age. There was no particular reason for clash. But he used to hold out threats of giving beatings to me, and often used to beat me.

(5) Public Witness . 16 with his endorsement Ex. Public Witness 8/A sent the report Ex. PW5/A to the police station for formal registration of the case and on the basis of which the formal report Ex. Public Witness 5/B was recorded at the police station at 2.35 p.m. Sarita succumbed to the Injuries at 9 p.m.

(6) Dr. Rohotaswa (P.W. 9) performed the post-mortem on the dead body of Sarita Gupta on 21st December 1982 and he noted the following injuries on her body : 1. Superficial and deep burns were present all over the body. Peeling of skin with vital reaction present at places. Blackening of skin present at places. Singeing of scalp hair, eye brows, eye lashes and pubic hair present. 2. Contusion I cm xl cm size over upper lateral quarter of left breast. The doctor further noted that the injuries were ante-mortem and cover 100% of body surface area. The doctor stated that the cause of the death was shock as a result of superficial and deep burns which were ante-mortem in nature and covers about 100% of body surface likely to be produced by flame.

(7) Earlier on admission Public Witness . 7 Dr. N.C. Bose had examined Sarita and he found deep burns involving both upper limbs except fingers right hand, both lower limbs except toes, trunk anteriorly and posteriorly, perinaeum. He further found superficial burns over face, neck, scalp and singeing of hair: The doctor stated that Sarita had 100% burns.

(8) Public Witness . 16 on inspection of the scene of crime found burnt pieces of clothes scattered outside the room on the terrace. He also found a can containing one litre of kerosene oil, two match-boxes, one was empty and the other was partly used, one partly burnt match-stick lying in the room near the can. The crime team was summoned and the scene of crime was photographed. Fire marks were seen on the wall outside the room and those burn marks on the wall were photographed. Photographs Exts. Public Witness 14/G, H and J relate to the burn

marks on the wall outside the room. Photographs Ex. Public Witness 14/G, 14/E, 14/B and 14/A show burnt pieces of clothes outside the room and the terrace. Public Witness . 16 prepared the rough site plan Ex. PW16/G on 20th December 1982. Mark 'A' is the spot where the can containing the kerosene oil was found. Mark 'B' is the spot where Sarita was found lying burnt. Mark 'C' is the spot where the burnt pieces of clothes were seen lying. We may emphasise here, and its importance we will show a little later, that the spot marked 'C' is on the terrace. Spots mark 'A' and 'B' are inside the room.

(9) The burnt pieces of clothes were sent to the Forensic Science Laboratory for examination and report. The report was that the burnt pieces of clothes do not contain kerosene oil. A sample of the kerosene oil out of the can was taken and sent for examination and report to the Central Forensic Science Laboratory on 23rd December 1982. The sample was found to contain kerosene oil. The report is dated 11th August 1983. It seems, that the sample for some reason was returned and it was again sent in June 1983. The investigating officer got a site plan prepared on 5th January 1983. The spot mark 'A' in the site plan shows the place where Sarita was found lying in burnt condition. Mark 'B' is the place where the plastic can containing the kerosene oil was found lying. Mark 'C' is the spot where the one empty match box and one match box containing match-sticks were found lying and mark 'D' is the spot where two burnt match-sticks were lying and mark 'E' shows the spot where burnt pieces of clothes were seen lying. The spots where burnt pieces of clothes were found lying has been encircled in black ink in the plan Ex. Public Witness 12/A. and has been given the mark 'E' spots extend a little inside the room. The rough site plan and the plan Ex. Public Witness 12/A are inconsistent and confliction regarding the spot or spots where the burnt pieces of clothes were seen. We may only remind that in the rough site plan prepared by the investigating officer the spots where the burnt pieces of clothes were seen are outside the room. We shall further discuss this aspect a little later.

(10) The accused in his statement at the trial admitted that he was married to Sarita Gupta in the year 1975 and that he was three children from her. He further admitted that he along with Sarita Gupta was living in second floor of house No. D-II, Naraina Vihar. He further admitted to have made the report on 20th December

1982 at about 11.45 a.m. of his having found his wife lying burnt. The accused admitted to have stated that his wife had burnt herself with kerosene oil but clarified that he had made the said statement under an impression that she had sprinkled kerosene oil on herself and burnt herself. The accused further stated that Sub-Inspector had found Sarita Gupta in the burnt condition outside the room. The accused further stated that the dying declarations made by Sarita Gupta are false. He further stated that he had found Sarita outside the room. The accused further stated that there were no burnt pieces of clothes inside the room and that the burnt pieces of clothes were only seen outside the room. He further stated that no photographs were taken on any spot inside the room. The accused stated that the case against him is false. He further stated as under:

'WHEN I came back to my house, I found my wife in burnt condition lying outside the room. I looked for help and conveyance but it was not available. Then I went to police station for help.'

The prosecution case mainly rests on the two dying declarations, one made before the doctor at the time of the admission in the hospital and the second before Public Witness . 8 Sh. K.. Shivaramakrishnan, Sub-Divisional Magistrate, New Delhi.

(11) Public Witness . 7 Dr. N.C. Bose gave evidence that on 20th December Sarita Gupta was brought to the hospital by Sub-Inspector Ram Phal Singh and Prabhu Dayal Gupta and that Sarita had herself disclosed that she had been set on fire by her husband P.D. Gupta at about 11 a.m. on 20th December 1982. The doctor further deposed that Sarita was fully conscious and coherent, but her condition was critical. The above testimony has gone unchallenged on the record.

(12) Public Witness . 8 Shri K. Shivaramakrishnan deposed that at the request of the police officer from police station Naraina he had gone to the Safdarjung hospital and recorded the statement Ex. Public Witness 5/A. of Sarita Gupta. The witness testified that Sarita Gupta was conscious and was responding to the questions. The above statement was recorded at 1.50 p.m. on 20th December 1982. The testimony of Public Witness . 8 has also gone unchallenged.

(13) On the basis of the evidence given by Public Witness s 7 and 8 we accept that Sarita Gupta had made the alleged two dying declarations. The crucial point that confronts us is how far the statement Ex. Public Witness 5/A is true. For the sake of convenience we can divide the statement Ex. Public Witness 5/A into the following parts: A : Her husband had set her ablaze after sprinkling kerosene oil on her and before that he had given her severe beating ; B : After setting her on fire he had closed her in a room and inspired by her loud cries he did not open the door ; C : That this incident had taken place in the morning but she did not remember the time ; D : That after setting her on fire and locking her inside the room he had gone for breakfast ; E: That he returned after about two hours and he after opening the room put a blanket on her and again left ; F: That she kept on calling him but her voice did not reach as they lived on the second floor ; G: That she was married about 6 years back and she has three children and that after the birth of her son quarrels and clashes started between her and her husband and her husband used to give her severe beatings ; H : That though there was no particular reason for the clashes but he used to beat her. The prosecution case admits of no doubt that on 20th December 1982 at about 11.45 a.m. or 12 noon Sarita was found with severe burns on the second floor of D-II, Naraina Vihar. The prosecution case further admits of no doubt that on the same day in the evening she died because of burn injuries. It is a common case that Sarita was married to the appellant in 1975 and Sarita Gupta gave birth to three children, two daughters and one son. The daughters, at the time of the occurrence, were aged 6 and 4 and the son was 8 or 9 months old.

(14) Sarita was examined immediately after admission in the hospital by Public Witness . 7 Dr. Bose. On examination Dr. Bose had found that Sarita had 100% burns. Dr. Bose does not say that he smelt any kerosene oil on the clothes, body or in the hairs of Sarita.

(15) Public Witness . 9 Dr. Rohotaswa had performed autopsy on the dead body of Sarita on 21st December 1982. He also does not say of his having smelt any kerosene oil in any part of the body of the deceased. The burnt pieces of clothes were sent for Chemical examination and the report is that no kerosene oil has been detected in the burnt pieces of clothes.

(16) Thus the medical evidence and the report of the Chemical examiner do not support the statement of the deceased that kerosene oil had been thrown on her before she was set on fire. Mr. B T. Singh, learned advocate for the State, contended that the accused in his report had stated that the deceased had burnt herself after pouring kerosene oil on her and this would support the dying declarations that kerosene oil was poured on her. We may say that the accused in his statement at the trial has clarified that it was his impression that the deceased had sprinkled kerosene oil on her body and burnt herself. We are of the view that in view of the report of the Chemical examine that no kerosene oil was found in the burnt pieces of clothes we will not be justified in drawing a conclusion adverse to the accused on the basis of his report that Sarita after pouring kerosene oil had burnt herself This would be more so for the reason that the medical evidence also does not prove the use of kerosene oil.

(17) Sarita next stated in Ex. PW5/A that after being set on fire the accused had locked her in the room and returned after about two hours and after opening the room put a. blanket on her and again left. We find that this part of the statement is belied by the facts found at the scene of crime. After the appellant lodged the report Ex. Public Witness 4/B at 11.45 a.m. Sub-Inspector Ram Phal Singh (P.W. 16) accompanied by constable Raghbir Prasad and the appellant had gone to D-II. Naraina Vihar. Public Witness . 16 found Sarita lying in burnt condition on the floor inside the room. He found pieces of burnt clothes outside on the terrace. Public Witness . 16 got the scene of crime photographed. He also prepared the rough site plan Ex. Public Witness 16/G. The rough site plan Ex. Public Witness 16/G shows that burnt pieces of clothes were found littered on the terrace. Exts Public Witness 14/A, Public Witness 14/E and Public Witness 14./G are the photographs of the burnt pieces of clothes. The photographer has written at the back of these photographs that the photographs show the pieces of burnt clothes lying scattered over the roof-meaning the terrace.

(18) Public Witness . 12 Balbir Singh prepared the plan Ex. Public Witness 12/A of the scene of crime. Mark 'E' in the plan shows the spots where the burnt pieces of clothes were stated to be lying. Public Witness . 12 has in the plan encircled the area from where the burnt pieces of clothes were recovered. This includes a small

area near the door inside the room. The two plans are not consistent regarding the area where the burnt pieces of clothes were found. Public Witness . 16 in court stated that the burnt pieces of clothes were found both inside the room and outside the room. The statement of Public Witness . 16 that burnt pieces of clothes were seen inside the room is contradicted by the plan Ex-PW 16/G prepared by him on 20th December 1982. Be that as it may, the fact remains that burnt pieces of clothes were found littered on the terrace. The photographs, if seen with the help of magnifying glass, will show that in a fairly large area burnt pieces of clothes are lying on the terrace.

(19) The photographs Exts. Public Witness 14/J, Public Witness 14/H and Public Witness 14/G are regarding the fire marks on the wall outside the room. Public Witness . 16 gave evidence that the photographs Exts. Public Witness 14/G, H and J are regarding the burn marks on the wall outside the room. Exts. Public Witness 16/DA and Public Witness 16/D8 also are the photographs of the fire marks on the wall outside the room. These photographs seem to have been produced by the accused and in cross-examination Public Witness . 16 was put these photographs.

(20) Now the fire marks on the walls and the burnt pieces of clothes on the terrace could not have come if the statement of Sarita that she was set on fire inside the room and her husband had closed the door and returned after about two hours is true. We have in evidence that inside the room there were beds, beddings and other furniture. We have no photographs of the furniture and other settings inside the room. The living room-cum-kitchen is about 20' X 12'. If Sarita had been put on fire inside the room and the room was closed from outside, as made out by Sarita in her dying declaration, the scene inside the room would have been totally different. There would have been extensive burning marks on the walls and the floor. Pieces of burnt clothes would have been seen in the entire room. Public Witness 16 does not state to have seen any blanket on the body of Sarita.

(21) The above would prove that the statement of Sarita that the husband after setting her on fire had closed her in the room and gone for breakfast and returned after about two hours, opened the room and put a blanket on her is not true.

(22) As regards the allegation that before sprinkling kerosene oil the husband had given her severe beating, the only evidence we have is that during the post-mortem a contusion 1 cm X 1 cm was found over the upper lateral quarter of left breast. We do not think from the above piece of evidence a conclusion can be drawn that the husband had given severe beating to Sarita as stated in Ex. Public Witness 5/A. Sarita in her dying declaration stated that after the birth of her son quarrels and clashes had started between her and her husband and he used to give her severe beating. We find no independent evidence to support the above statement. At the time of the occurrence the deceased and the appellant were married for about 7 years. They had three children. The son was born only 8 or 9 months back. There seems to be no reason for the husband to beat his wife.

(23) We would here like to deal with another important aspect of the case. The prosecution had cited the father Dwarka Dass and the elder brother Chander Shekhar as witnesses. PW. 11 Chander Shekhar was examined on 25th May, 1984. P. W.11 testified that the behavior of the accused towards his sister was normal and he was a loving husband and that his sister never complained to them about any misbehavior of the accused. The witness further deposed that he met his sister in the hospital but she was unable to speak. The witness further deposed as under :

'MY sister left behind two daughters and one son who was youngest. The elder daughter is aged about 6 years. Younger to her is about 4 years and the son was born in April 1982. I met my sister 2 or 3 days before the incident. Her brain was not properly working after the birth of the son.'

The Additional Public Prosecutor requested the court to declare the witness hostile. The court declared the witness hostile and allowed the Public Prosecutor to cross-examine him. Public Witness . 11 in cross-examination denied to have stated before the police that for about a year before the incident the relations between the accused and his sister were strained. Certain other suggestions were also made to the witness but he denied to have made any such statement before the police. Public Witness . 11 was confronted with the statement Ex Public Witness 11/A but he denied to have made the said statement. Public Witness . 11

further in cross-examination slated as follows :

'AT the time of this incident, the youngest child of my sister was with us and her two daughters were living with the younger brother of the accused. The accused was living in Naraina at the time of this incident. Since the time her brain was not working, we used to bring our sister to our place for treatment. My sister went with the accused to his place about 2-3 days before this incident after staying a tour place for about 12 months. A maid had been engaged by the accused for cleaning the utensils, etc. But I do not know as to who used to prepare the meals.'

To a question : 'You have stated about her brain not properly working, can you explain the witness replied :

"MY sister used to complain of headache, ache in the body and also used to say that the astrologer has predicted hard time for her after the birth of the son'. The witness further deposed that his sister had become completely indifferent to life and she did not care about her food and dress, and that she was also neglecting the children and not looking after them properly.'

In cross-examination by the accused, the brother deposed that it is correct that due to the mental condition of Sarita it was decided that they would keep the son and the daughters would be kept by the younger brother of the accused. He further deposed that they did their best to consult doctors but Sarita refused to get the medical treatment. He further deposed that Dr. Chadha in whose house his father is a tenant is a Vaid and that after great persuasion Sarita had agreed to have the treatment of Mr. Chadha and that Mr. Chadha had prescribed some medicines to Sarita but there was no improvement in her condition. He further deposed that Mr. Chadha got some medicines for Sarita from outside Delhi.

(24) On 25th May, 1984 Dwarka Dass, father of the deceased, was present in the court. The Additional Public Prosecutor made a statement giving up Dwarka Dass as unnecessary. We are of the view that Dwarka Dass was purposely not examined. During investigation two versions had surfaced-one given by the deceased that she was burnt by her husband and the second that the husband had good relations with the wife and that after the birth of the son the wife had

developed mental trouble and she started heating and neglecting the children, so much so, that the son was shifted to the house of the father and the girls were shifted to the house of the brother of the husband. The deceased was treated by one Dr. Chadha, but there was no improvement.

(25) The investigating officer in his report submitted under Section 173 of the Code of Criminal Procedure has written that he had examined Dwarka Dass and Chander Shekhar and they had said that Sarita was mentally retarded and they did not suspect the husband in the death of Sarita. The investigating officer further wrote that the doctor attending on Sarita was also joined in the investigation and the doctor stated that he had treated Sarita but he was not able to produce any documentary evidence in this regard. The investigating officer had recorded the statements of Dwarka Dass, Chander Shekhar and Dr. Chadha, Chander Shekhar and Dwarka Dass were cited as witnesses. But surprisingly Dr. Chadha was not cited as a witness. Dwarka Dass, we presume, in all probability would have supported what he had stated before the police. In any case, it was not for the additional Public Prosecutor to decide whether Dwarka Dass was or was not a necessary witness. In the circumstances of this case, he should not have withheld Dwarka Dass and should have examined him to present a complete picture, both for and against the accused and left it to the court to judge the truth. We further are of the view that after the examination of Chander Shekhar the court should have insisted on the examination of Dwarka Dass or examined him as a court witness. The investigating officer or the prosecutor cannot be allowed to withhold witnesses who are important in the unfolding of the prosecution case.

(26) The prosecutor has to be fair in the presentation of the prosecution case. He must not suppress or keep back from the court evidence relevant to the determination of the guilt or innocence of the accused. He must present a complete picture and not one sided picture. He must not be partial to the prosecution or to the accused. He has to be fair to both sides in the presentation of the case.

(27) We are of the view that on the failure of the prosecution to examine Dwarka Dass the court would be justified in drawing an inference that if Dwarka Dass was

examined he would have supported the case of the appellant that at or about the time of the occurrence Sarita was mentally sick. He also would have proved that Sarita was under the treatment of Dr. Chadha. The non-production of Dr. Chadha has deprived the court to find out the nature of the mental ailment of Sarita. It is well known that mentally unsound patients sometime assume facts which have no reality and sometimes they form fixed ideas and repeat the same without there being any truth or reality in them. If Dr. Chadha had been examined we could have known about the mental condition of Sarita.

(28) From the reports submitted by the investigating officer under Section 173 of the code of Criminal Procedure, it appears that uptill the submission of the report there was no evidence that prior to the incident the relations between the accused and Sarita were strained or that the accused was mal-treating Sarita. If the statement Ex. Public Witness 11/A was in existence then the investigating officer would have made a mention of it in the report under Section 173 of the Code of Criminal Procedure. The report clearly shows that both Dwarka Dass and Chander Shekhar did not suspect the accused in the death of Sarita. From the deposition of Public Witness . 11, it is clear that Sarita was mentally unsound and she was not looking after the children and that because of the mental condition of Sarita the son was shifted to the house of the father of Sarita and the daughters were shifted to the house of the brother of the accused, obviously, the children were taken away because it was felt that it would not be safe to leave them alone with the mother.

(29) On these facts, the important question arises whether the dying declarations made by Sarita could be trusted and made the basis of the conviction. The circumstances found at the spot noon after the occurrence, do not support the statement of the deceased that after being put on fire she was locked inside the room. The burnt pieces of clothes were found littered outside the room on the terrace. The site plan Ex. Public Witness 16/G does not show any burnt pieces of clothes inside the room. Of course, as already, notices, in the plan Ex. Public Witness 12/A some pieces of burnt clothes are shown in a small area near the door inside the room. The correctness of the above is not free from doubt. But the fact remains, and it is clearly evidenced by the photographs and the testimony of

the investigating officer, that in a large area on the terrace burnt pieces of clothes were found scattered soon after the occurrence. The wall outside the room had 'fire' marks.

(30) Mr. B T. Singh contended that it is possible that after the room was opened by the accused Sarita had run out of the room and stood against the wall and that may have caused the fire marks on the wall. We do not think that the 'burn' marks seen on the wall in the photographs could come as suggested by the learned counsel. These fire marks could come on the wall if the wall had come into contact with the burning object and that too with a flame rising 4 to 5 feet high. The statement of Sarita is that the accused had returned after two hours. If that be so, the fire must have long before extinguished. The scene of crime as seen immediately after the occurrence does not support the statement of the deceased that she was set on fire inside the room and thereafter the room was locked. We are also unable to understand how the deceased knew that after locking her inside the room the accused had gone for breakfast. This part of the statement is wholly unintelligible. No blanket was found at the spot. This also contradicts the statement of the deceased that the appellant had covered the deceased with a blanket

(31) On these findings and the fact that Santa was mentally sick immediately before the occurrence we are of the view that it would not be safe to rely on the dying declarations without corroboration. We have no independent evidence corroborating the dying declarations. We are conscious that the dying declarations were recorded within 2 to 3 hours of the occurrence but in the circumstances found by us were firmly of the view that it would be wholly unsafe to act on the dying declarations

(32) While the arguments were in progress the Indian Federation of Women Lawyers, Delhi unit, filed an application for permission to intervene in the hearing of the appeal. We allowed Mrs. Kapur to address us.

(33) On our bestowing our very careful consideration to the arguments addressed at the bar, we are of the view that the prosecution has failed to establish the charge against the appellant beyond a reasonable doubt. We would allow the

appeal, set aside the conviction and sentence of the appellant and acquit him.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com