

Durgo Vs. State

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Court : Delhi

Decided On : Jan-22-1991

Reported in : 1992CriLJ730; 43(1991)DLT554; ILR1991Delhi144

Judge : Malik Sharief-Ud-Din and; Jaspal Singh, JJ.

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

Appeal No. : Criminal Appeal No. 218 of 1987

Appellant : Durgo

Respondent : State

Advocate for Pet/Ap. : Neelam Grover, Adv

Judgement :

Jaspal Singh, J.

(1) In the year 1980 Smt. Durgo was married to Lila Dhar. However, soon thereafter their matrimonial life started facing rough weather. The reason being, besides petty domestic differences, his addition to smack. Both were living in a portion of the house belonging to Umrao Lal and Smt. Bhouri, parents in law of Smt. Durgo. On the fateful day of October 13, 1985 at about 3 p.m. Umrao Lal and Smt. Bhouri heard Lila Dhar shouting Bachao Bachao. They rushed to his room which was bolted from outside and on opening the same found their son in flames.

He told them and Dal Chand (who too had arrived there) that it was his wife who had poured kerosene oil on him and had set him ablaze. Soon thereafter he was rushed to the hospital. At the hospital, immediately on his admission he told the doctors attending upon him that he had been burnt by his wife. This was at about 3.55 P.M. The same day at about 4.20 p.m., on his having been declared fit to make statement, S.I. Dharam Singh recorded his statement. The same is Ex. 17/A. Therein also he stated in clear and unambiguous terms that it was his wife who had poured kerosene oil on him and had set him on fire by using a match box. He also spoke of his frequent quarrels with his wife.

(2) On October 14, 1985 Lila Dhar went to eternal sleep. His mortal remains were subjected to post mortem by Dr. A.S. Sen who found burn injuries of second to third degree scattered over the right side and back part of head, face, neck all round, right upper limb all over except back of elbow and upper half of forearm, left upper limb all over except back of lower half of arm up to the upper half of forearm, front and sides of chest and abdomen up to the level of umbilicus, antero-medial part of lower half of the right thigh and knee, antero-medial part of lower half of left thigh extending up to the upper third of the leg and back of chest up to the level of 2' below the level of interior angle of scapula. He also found cuticle blackened and peeled off at places over the burnt areas. In his opinion injuries were sufficient to cause death in the ordinary course of nature.

(3) The learned Additional Sessions Judge framed charge under section 302 to the Indian Penal code and on conclusion of the trial found Smt. Durgo guilty. He consequently convicted her under section 302 of the Indian Penal Code and sentenced her to imprisonment for life besides a fine of Rs. 50/-. Hence, this appeal.

(4) We were taken through the records by Ms. Neelam Grover. She was brief but incisive. As per her the learned Additional Sessions Judge had not looked into the case in the right perspective and was not justified in accepting 263 the dying declarations. Her grievance was that as the appellant had no opportunity to cross-examine Doctor Arvind Gupta who had recorded the MLC (Ex. Public Witness 13/A) containing the dying declaration and S.I. Dharam Singh who too had recorded the

statement of Lila Dhar (Ex. Public Witness 17/A), therefore, the trial court ought to have ignored the said dying declarations.

(5) We need not burden this judgment with a resume of the evidence. The whole case admittedly revolves around the dying declaration made by Lila Dhar before his parents and Dal Chand (Public Witness s .1, 2, & 3 respectively) at his house, before Doctor Arvind Gupta (MLG Ex. Public Witness 13/A) and S.I. Dharam Singh (Ex. Public Witness 17/A).

(6) Undoubtedly, Doctor Arvind Gupta, who recorded the Mlc (Ex. Pw 13/A) has not been examined. As per Nand Lal (Public Witness 13) the said doctor has left the hospital and his whereabouts are not known. This being the position and there being no suggestion in cross-examination that the doctor has not left the hospital or that his whereabouts are known to the hospital authorities, the appellant cannot now be allowed to come forward and say that the prosecution was not justified in not examining Dr. Gupta. We may hasten to add that the fact that the Mlc is in the handwriting of Dr. Arvind Gupta and that it bears his signatures, stands proved by the statement of Nand Lal who is the record keeper in the Ram Manohar Lohia Hospital.

(7) Coming to the statement Ex. Public Witness 17/A, as already noticed above, it was recorded by S.I. Dharam Singh at the hospital after the doctors had declared Lila Dhar fit to make the same. Of course, S.I. Dharam Singh too has not been examined. But then how could he be? He died before catering the witness box.

(8) Ms. Grover seriously challenged the veracity of the dying declaration made before Umrao Lal, Smt. Bhourri and Dal Chand. As per her, Umrao Lal and Bhourri, being the parents of the deceased and Dal Chand being a close relative, they were highly interested witnesses. It was argued that Umroo Lal and Smt. Bhourri having made improvements on the point as to whether the room was bolted from outside or not, they could not be taken to be persons worthy of reliance. We find ourselves unable to make ourselves agree with the contention. True, Umrao Lal and Smt. Bhourri are the parents of the deceased and Dal Chand too is a relation. However, this in itself is no ground to brush aside their otherwise cogent and convincing evidence. Umrao Lal and Smt. Bhourri were living in a part of the same

house and as such their presence at the place of occurrence cannot be considered to be unnatural. Similarly Dal Ghand too lives in the neighborhood. Undoubtedly; there is some confusion in the statements on the point as to whether the room was found bolted from outside or not. Even if on this aspect of the matter Umrao Lal and Smt. Bhouri are taken to have made improvements that, in itself, would not be sufficient to reject their entire evidence.

(9) We may mention here that it was also argued that as S.I. Dharam Singh had not made any attempt to call a Magistrate to record a dying declaration of the deceased, therefore, no reliance should be placed on the statement 264 Ex. Public Witness 17/A recorded by him. Undoubtedly, the Supreme Court has observed in Dalip Singh v-State of Punjab AIR 1979 Sc 1173 that the practice of Investigating Officer 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 a Magistrate. However, no hard and fast rule can be laid in this regard and that is why in State of Punjab v. Amarjit : 1989 CriLJ95 the apex court has observed that it all depends upon the facts and circumstances of each case. In the present case S.I Dharam Singh having died before his examination as a prosecution witness, we have been deprived of knowing how his mind was actually working and what was his perception of the situation, It, however, does appear to us that he did not perceive any urgency and keeping in view the totality of facts and circumstances of the case, we do not find ourselves inclined to throw out E.x. Public Witness 17/A merely on account of the failure of the Investigating Officer to get a dying declaration recorded by a Magistrate.

(10) The law with regard to dying declarations is now well settled. A dying declaration may form the sole base of conviction even though it is not corroborated. However, the court has to be satisfied that the declaration made was truthful In the present case the deceased made the dying declaration before his parents and Dal Chand soon after the occurrence. After reaching the hospital he made yet another dying declaration before the doctors. After having been declared fit to turn making a statement, his statement was recorded by S.I, Dharam Singh. Everywhere he was consistent. Everywhere he stated that it was his wife who had set him ablaze. There is no contradiction. There is no variation. And, significantly,

there was no extraneous influence. We find absolutely no reason, even after having subjected the evidence to a close scrutiny, to reject the dying declarations. They pass the test of reliability and we are convinced that they contain the truthful version as to the circumstances of his, death.

(11) Reference has already been made to the fact that the matrimonial life of the appellant was far from happy. There were frequent quarrels and the major reason was the addiction of the deceased .o smack. This provides (he motive. The post mortem report to which reference has already been made above, shows that Lila Dhar had sustained burn injuries which were sufficient to cause his death in the ordinary course of nature. The report of the Central Forensic Laboratory (Ex. PX) shows that the cloth sheet lying over the deceased, his underwear and his partly burnt hair contained kerosene oil residue. All these facts, coupled with the dying declarations, point to the guilt of the appellant and, while arriving at this conclusion, we find not even a shred of doubt. We thus add cur voice to the voice of the learned Additional Sessions judge.

(12) The appeal is dismissed.

(13) The bail bonds are cancelled.

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