

Mange Ram and anr. Vs. State

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Court : Delhi

Decided On : Jul-23-1990

Reported in : 42(1990)DLT273; 1990(19)DRJ155

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

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

Appeal No. : Criminal Appeal No. 250 of 1985

Appellant : Mange Ram and anr.

Respondent : State

Advocate for Pet/Ap. : D.C. Mathur,; Neelam Grover and; B.D. Batra, Advs

Judgement :

Jaspal Singh, J.

(1) Ranbir Singh was a Head Constable in the Delhi Police. He used to live with his wife Somwati in village Lado Sarai in the house owned by his father-in-law Mange Ram. On the fateful day of March 15, 1984 at about 8 30 p.m. while he was in the said house he received 86% burn injuries. He was rushed to Safdarjung Hospital where, on March 19, 1984 he went to eternal sleep. As per the post mortem report it were the burn injuries which had let to toxemia and septicemia resulting in the death.

(2) The prosecution claimed that it were Mange Ram and Somwati who, in furtherance of their common intention, had committed the murder by sprinkling kerosene oil and setting Rambir Singh ablaze. The learned Addl. Sessions Judge, who tried them, found himself in agreement with the prosecution. He convicted and sentenced them to undergo imprisonment for life under Section 302 read with Section 34 of the Indian Penal Code. Needless to say both Mange Ram and Somwati have found the judgment of conviction and the order of sentence unpalatable. Hence this appeal.

(3) The entire edifice of the prosecution is founded on two dying declarations made by the deceased. One before Dr. V.K. Tewari of the Safdarjung Hospital (Public Witness -5) who had examined him on March 15, 1984 at 9.10 p.m. and the other recorded by Asi Harpal Singh (Public Witness -24) the same day at about 10.30 p.m.

(4) The dying declaration made before Dr. VK. Tewari was reduced into writing and forms part of the medico legal report (Ex. Public Witness 5/A). It runs as follows :-

'INFORMATION: Patient Ranbir Singh Rathi (himself) B/B Vinod Kumar Alleged H/O sustaining burns while he. was in his in laws' place where his father-in-law (Mange Ram) and wife Mrs. Somwati poured kerosene oil at him and put him on fire around 8.30 p.m. on 15-3-1984.'

(5) The statement made by the deceased before Asi Harpal Singh (Ex. Public Witness 6/A) is in greater detail. Its sum mumbo num is that on March 15. 1984 when he informed Mange Ram that he wanted to take Somwati with him to his own house to celebrate Holi, Mange Ram reported : 'Bhen-Chod Tu Zinda Jayega Jab Bhi Le Jayega Isko' and soon thereupon Somwati while addressing her father : 'BAPU Aaj Pakar Le Isko Aur Lati Hoon Tel Main', locked the room, sprinkled kerosene oil on her husband and set him on fire with a match-box. It was only thereafter that he raised alarm which attracted the neighborhood and it was one of the neighbours who took him to the hospital in a taxi and got him admitted there.

(6) Mr. D.C. Mathur, the learned counsel for the appellants launched a severe four pronged attack on the dying declarations As per him although it was the case of the prosecution that it was kerosene oil which had been sprinkled on the deceased, the Central Forensic Science Laboratory in its report (Ex Public Witness 10/B) had found no sign of kerosene oil on his clothes. This, according to him, was sufficient, in itself, to demolish the entire edifice raised by the prosecution.

(7) His second ground of attack was that Mange Ram was nowhere near the scene of occurrence and had been falsely implicated. In support our attention was drawn to the statements of Karambir Singh, Geeta Devi and Hari Singh (Public Witness 2, 7& 8 respectively). Whereas Karamvir Singh has deposed that he had not noticed Mange Ram on reaching the place of occurrence, Geeta Devi, who lives in the first floor of the same building, has claimed that it was she who, on hearing Somwati weeping, had gone to the house of Mange Ram to call him and that thereafter Mange Ram had come running to the place of occurrence. Coming to Hari Singh, though he is a permanent resident of another village, he claims to be present on the fateful day in the house adjacent to the house where the occurrence had taken place. As per him he had heard the deceased and Somwati quarrelling with each other followed by a sound of thud and that when he entered their room after scaling a wall he found the deceased lying on a cot in burnt condition and covered by a quilt and further that it was he who had sent Geeta Devi to call Mange Ram. Mr. Mathur's contention was that the evidence noticed above totally ruled out the presence of Mange Ram at the crucial time and that once this was accepted, the dying declarations could not be accepted as truthful.

(8) The absence of the signatures, of Asi Harpal Singh on the statement recorded by him of the deceased (Ex. Public Witness 6/A) provided ammunition for the third attack.

(9) And lastly the dying declarations were sought to be rejected on the ground that despite persuasion by the Sub-Divisional Magistrate (Public Witness -29) who too had reached the hospital at about 11 p.m., the deceased refused to make any statement before him.

(10) Undoubtedly the report of the Central Forensic Science Laboratory (Ex. Public Witness 10/B) does go to show that it did not find any sign of kerosene oil on the clothes of the deceased. However, Somwati herself has stated under Section 313 of the Code of Criminal Procedure that the burns were caused by the oil lying in the cooking stove. Of course, she does state that the oil was sprinkled by the deceased himself. However, that is another matter. What is of significance is the admission with regard to the combustible material which caused the burns And it is this admission which takes away the string from the argument advanced.

(11) Coming to the second contention, undoubtedly the witnesses referred to above do go to show that Mange Ram probably lived in another house and that he was called from there However, much cannot be allowed to be made out of this evidence too for the simple reason that neither any one of them has been put up as an eye witness to the occurrence nor any one of them claims to be Geeta Devi never entered the premises where the occurrence had taken place and as far as Hari Singh concerned he entered the room much after the burning had already taken place- When he entered the room, he found the deceased lying on a cot with burn injuries and covered by a gadda. He thus missed the real act. In fact he reached when the curtains had already been lowered. He saw neither the actors nor the gory drama staged in the room. It is for this reason that we tend to ignore them on the point in issue. We may, however, hasten to add that it was submitted by Mr. B.D, Batra, Senior Standing Counsel for the State, that the deceased being a rank outsider to the village and the appellants being its permanent residents, the witnesses were trying to shield them and further that even if Mange Ram was not seen by the witnesses, the possibility of his having slipped away after setting the deceased on fire, could not be ruled out. The argument is not less appealing but we find hardly any need to enter into the realm of surmises in view of what has already been noticed by us above. However, before we draw the curtain, the last word. As per Vinod Kumar (PW-3) on way to the hospital the deceased had stated : 'Behin-Chodo ne Maar Diya'. Does the formation of the sentence and the use of plural tense not point to the presence of more than one person at the time of the occurrence This much for the second contention.

(12) Undoubtedly the statement recorded by Asi Harpal Singh (Ex. Pw 6/A) does not bear his signatures. How does it militate against the prosecution That it was ne who had recorded the statement stands proved not only from the statement of Asi Harpal Singh (Public Witness -24) but also from the statement of Si Gang Sahai who has entered into the witness box as Public Witness - 28. The failure of Asi Harpal Singh to sign the statement would not make it fall more so because has explained, and so has Si Ganga Sahai, the circumstances leading to his handing over the investigation to Si Ganga Sahai at the instance to the Station House Officer. It appears from the evidence that while Asi Harpal Singh was recording the statement of the deceased the Station House Officer accompanied by Si Ganga Sahai reached there and after the statement had been completed the said Asi was directed to band over the investigation to Si Ganga Sahai. It was for this reason that the statement so recorded was immediately handed over to the said Si Ganga Sahai. The endorsement made thereafter by Ganga Sahai (Ex. Public Witness 24/A) further tends support to this version. There is thus an Explanationn. In any case the absence of the signatures of the police officer on the dying declaration would not make it less truthful. This being the position much cannot be allowed to be made out of the fact that he statement was not signed by the said ASI. And with this, let us proceed to deal with the last contention.

(13) The Sub Divisional Magistrate has been examined by the prosecution as Public Witness -29. He had reached the hospital on March 15. 1984 at about 11 p.m. and had found the deceased groaning with pain. He informed the deceased that he was a magistrate and wanted to record his statement. The deceased, however, refused to make any statement despite persuasion. He admits, however, in his cross-examination, that the deceased had informed him that he had already made a statement Why did the deceased refuse to make a statement before the Sub Divisional Magistrate This was the question which was repeatedly posed by Mr. Mathur. It was argued that as no Explanationn was forthcoming on the record it must be taken that the deceased was not willing to make any statement and that actually he had nothing to say with regard to the-occurrence. We are not here to supply any reason. It was the job of the prosecution. We would refuse to fill up any gap, any hiatus. However, it must be remembered that the deceased was suffering from 86% burn injuries When be was contacted by the Sub Divisional Magistrate

he was already groaning with pain A few minutes before the arrival of the Sub Divisional Magistrate the deceased had already made a detailed statement before Asi Harpal Singh and earlier to that too a statement had been made by him before the doctor attending on him. His agony may have been a cause. The fact that he had already made statements may also have been a reason. However, what we do feel is that even this refusal would not cut at the root of the statements made by him earlier. Nor would it, in any way, belittle their importance.

(14) Great weight must naturally and necessarily be attached to the dying declaration where the-deceased had a clear opportunity to observe and identify his assailants and where it was made in a fit state of mind free from the taint of tutoring and prompting and at the earliest opportunity. Where there, are more than one dying declarations, their consistency would add to their weight. The dying declarations before us squarely meet these demands. The deceased had the opportunity to clearly observe and identify his assailants. They were no strangers to him One was his own wife and the other his father-in-law. There was none to tutor, influence or prompt him. The evidence on the record shows that his capacity to remember was not impaired and that he was fit to make the statements after the occurrence. What is more important is that-both the statements were made at the earliest opportunity and are consistent. They pass the test of our close scrutiny as to their truthfulness.

(15) It was argued by Mr. Mathur that even if the prosecution version be accepted, the case would fall under part ii of Section 304 of the Indian Penal Code because of lack of intention to murder and secondly because the doctor who conducted the post mortem did not opine that the injuries caused were sufficient to cause death in the ordinary course of nature. We find ourselves unable to make ourselves agree to this contention. The facts on the record speak for themselves. The deceased suffered 86% burn injuries at the hands of the appellants. The dying declaration made before Asi Harpal Singh makes it abundantly clear that the appellants had already made up their mind not to leave him alive.

(16) True, the doctor who conducted the post-mortem has not expressly stated that the injuries were sufficient in the ordinary course of nature to cause death.

There was no need for a parrot-like reproduction of these words. They are inherent in the report. In any case, the post mortem report (Ex. Public Witness 4/A) and Dr Dharamvir Saharan (Public Witness -4) speak of 86% burn injuries leading to toxemia and septicemia resulting in the death. The injuries caused were thus fatal by themselves.

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